

IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON MONDAY THE 5TH DAY OF MAY, 2014
BEFORE THE HONOURABLE
JUSTICE M.B. IDRIS
JUDGE

SUIT NO: FHC/L/CS/84/12

BETWEEN

MR. CHRIS EKEMEZIE **JUDGMENT
CREDITOR**

**(Trading under the name and style
of C. Chris Ekemezie & Associates)**

AND

<p>1. THE INSPECTOR GENERAL OF POLICE 2. THE COMMISSIONER OF POLICE (Lagos State Command) 3. INSPECTOR AYUBA ARIBU (Lion Building Police Station</p>	}	<p>JUDGMENT DEBTORS</p>
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AND

FIRST BANK OF NIGERIA PLC GARNISHEE

RULING

Pursuant to the judgment of this Court delivered on the 19th day of February, 2013, the Judgment Creditor had applied by way of garnishee proceedings for the

enforcement of the judgment and the Court had ordered the Garnishee herein to show cause why the order *nisi* made on the 14th day of October, 2013 will not be made absolute against it. The Garnishee (First Bank of Nigeria Plc) had in its affidavit dated 5th November, 2013 deposed on oath that its database search revealed only three (3) accounts of the 1st Judgment Debtor with technically insufficient funds to satisfy the judgment debt. The Garnishee was therefore discharged.

Upon further search by Judgment Creditor, more bank accounts of the judgment debtor with the Garnishee were discovered and brought to the Court's attention upon which the Court again made an Order on the 4th day of December, 2014 attaching the judgment sum belonging to the judgment debtor and in custody of the Garnishee, and for the Garnishee to show cause why the order should not be made absolute.

The Garnishee bank again filed an affidavit to show cause dated 19th December, 2014 and this time stated that its database search revealed five (5) Bank accounts belonging to the Judgment Debtor and yet none of the 2 accounts

upon which the Court's Order of 4th December, 2013 was made was included in the five accounts exhibited by the Garnishee. The Court then directed specifically on the 6th day of February, 2014 that Garnishee should show the standing of Accounts Nos: 2017655572 and 2015950936. Judgment Creditor's counsel, having noticed the clear attempt of Garnishee to conceal facts from the Court also filed a Reply Affidavit dated and filed on the 14th day of February, 2014 to which the Garnishee responded with a Further and Better Affidavit to show cause dated and filed on 19th day of February, 2014. It is with respect to these affidavits that the Honourable Court directed that written addresses be filed.

It has been succinctly argued by the Judgment Creditor herein that:-

- (a) The Garnishee has not complied with the Order of Court made on the 4th day of December 2013 and the further direction of the Court made

on 6th February 2014 to the effect that it should file a statement under oath showing the standing of the 1st Judgment Debtor's accounts No. 2017655572 and 2015950936;

- (b) That failure to comply with the Orders of Court amounts to contempt of Court Order and the Garnishee ought not be given audience in same Court;
- (c) That Garnishee's Further and Better Affidavit to Show Cause deposed to on the 19th day of February 2014 is defective and ought not to be relied on by the Court;
- d. That even if the Court is minded to rely on the defective paragraphs of the affidavit, its content cannot hold sway and is therefore untenable; and
- e. That the Force Headquarters is where the office of the Inspector-General of Police is situated and same is

under his control and authority as the head of the entire Nigerian Police structure and, *Ipsa facto* the “Force Headquarters Overhead (Pool)” account is one of Inspector-General's various accounts

The Court was therefore urged to direct that the Garnishee comply with the subsisting order of the Court to show the standing of the accounts in question for further directions.

In the Garnishee's written address, it was argued therein that:-

- (a) That the judgment creditor Account No. 2017655572 and 2015.950936 belonged to Force Headquarters Overhead Account (Pool) and Nigerian Police Personnel Emolument respectively and not the 1st judgment debtor as the accounts of the 1st judgment debtor has been duly exhibited in the affidavit to show cause by the garnishee
- (b) That the judgment creditor has

failed/neglected to obtain the mandatory consent of the Attorney General as required by Law; and

- (c) That the judgment creditor is trying to use the order of mandamus obtained against the Attorney General as "consent" and this Honourable Court cannot stamp its authority to such illegality.

The Court was urged to discharge the garnishee from this proceeding as there is no nexus between Force Headquarters Overhead Account (Pool) and Nigerian Police Personnel Enrolment and that of Inspector General of Police. Moreso that the judgment creditor has carefully avoided obtaining consent as required by law.

The following cases were relied on:-

- (1) **GREEN VS. GREEN (1987) 3 NWLR (PT. 61) 480**
- (2) **SHITTA-BAY VS. FBSC (1981) 1 SC 40**
- (3) **OHAKIM VS. AGBASO (2011) 47 NSCQR 324**
- (4) **OJO VS. WILLIAMS (1933) NWLR 163**

I have read the processes filed and I have carefully considered the submissions made by Learned Counsel.

The Garnishee was served with the Order of the Honourable Court on the 11th day of December 2013 and filed its affidavit showing cause on the 19th of December, 2013. The Order *nisi* directed the garnishee to:-

" ... file a statement under oath showing the standing of the account of the 1st Judgment Debtor as at the date of service of the order nisi on the Garnishee. "

The Court on the 6th day of February, 2014 further directed that the Garnishee be served with a copy of the affidavit in support of application for the *Order nisi* to enable the Garnishee show the standing of those particular accounts contained therein. In the Further and Better Affidavit To Show Cause dated 19th February 2014 filed by the Garnishee, It clearly failed to

comply with the Order of Court and instead embarked on a voyage of legal arguments that the said accounts do not belong to the 1st Judgment Debtor. It is trite that what the Garnishee is directed to do is to place before the court by affidavit evidence the statement of the named accounts *simpliciter* and the statements will speak for themselves being documentary evidence which will need no further proof.

Section 115(1) and (2) of the Evidence Act 2011 provides:-

"(1) Every affidavit used in the Court shall contain only a statement of fact and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true"

"(2) An affidavit shall not contain extraneous matters, by way of objection, prayer, or legal argument or conclusion."

A cursory look at the Garnishee's Further And Better Affidavit to Show Cause reveals that it is loaded with extraneous matters in the form of legal arguments, conclusions and legal submissions contrary to the rule of affidavit evidence. I have seen paragraphs 5, 7, 9, 10, 12 and 13 of the Further and Better Affidavit.

Paragraphs 5 and 7 are purely legal arguments. Paragraphs 9, 10 and 12 are both arguments and conclusions while paragraph 13 is a legal submission. These paragraphs of the said affidavit flout the Evidence Act and therefore cannot stand. In the case of **DANA IMPEX LTD VS. AWUKAM (2006) ALL FWLR (PT.311) AT 1924 PARTICULARLY AT PAGE 1939 PARAGRAPHS G - A** the Court of Appeal held thus:

"An affidavit should contain only statement of facts and circumstances to which a party has deposed either of his personal knowledge or from information which he believes to

be true excluding extraneous matters such as objections, prayers, legal arguments and conclusion."

I hold that the above listed paragraphs of the Garnishee's Further and Better Affidavit grossly violate these mandatory rules of affidavit and ought to be struck out on the above authorities. They are struck out. If these paragraphs are struck out, there would be nothing substantial left in the affidavit to convince the Court to hold that the Garnishee has shown cause why the Order *nisi* should not be made absolute.

It is a settled law that a subsisting Order of Court remains valid and must be obeyed until set aside. To underscore this age-long rule, the Court of Appeal in **OBEYA VS. FIRST BANK OF NIGERIA PLC (2012) ALL FWLR (PT.636) AT 544 particularly at 555 paragraph B**, held that-

"An order of Court of competent jurisdiction remains inviolate until set

aside. Anyone who an Order is made against *must obey* it until the Order is set aside or discharged. Once an Order exist, it must be obeyed"

The Order of this Honourable Court directs the Garnishee to show "*the standing of the accounts of the 1st Judgment Debtor as at the date of service of the Order nisi on the Garnishee.*" It is logical that the only acceptable means of showing the standing of an account of a Judgment Debtor is by exhibiting the statement of account. The Garnishee instead of so doing, chose to ignore the Court Order and directive and rather turned itself to the Judgment Debtors' mouthpiece, arguing on their behalf, albeit illogically, that the Force Headquarters bank account does not belong to the Inspector-General of Police. The Garnishee by refusing to obey the Order of Court made on 4th December, 2013 is in contempt of Court's order. A contemnor ought to

be denied audience in Court until he purges himself of this contempt. See **OBEYA V. F.B.N. PLC (Supra)**.

The Court has held that paragraphs 5, 7, 9, 10, 12 and 13 ought not to be seen in an affidavit because they are not facts. Out of abundance of caution and assuming I am wrong, it is my view that Accounts No: 2017655572- "Force Headquarters Overhead Account (Pool)" and 2015950936 - "Nigerian Police Personnel Emoluments" belong to 1st Garnishee and any contrary submission is incongruous, untenable and would lead to manifest injustice. Section 3 of the Police Act (Cap19) Laws of the Federation of Nigeria 2004 provides that-

"There shall be established for Nigeria a Police Force to be known as the Nigerian Police Force (in this Act referred to as the "the Force")"

Section 6 provides –

"The Force shall be under the command of the Inspector General and

contingents of the Force stationed in a state shall be subject to the authority of the Inspector- General, be under the command of the Commissioner of that state.”


Furthermore, Section 3 of the Nigeria Police Regulations which is one of the subsidiary legislations under the Police Act, provides thus:-

“For the purpose of these Regulations, the office of the Inspector-General shall be deemed to be a Police Area Command and may be referred to as Force Headquarters”

It is my view that the fact that the Police Force Headquarters is fully under the control and authority of the Inspector-General of Police is a fact the Court is enjoined to take judicial notice of by virtue of Section 122(2)(a) of the Evidence Act 2011. That counsel to the garnishee is disputing this notorious and elementary fact is bemusing. I hold that the bank accounts in question are under the control and authority of the 1st Judgment Debtor (the Inspector-General

of Police).

In the circumstances, the garnishee is hereby directed to comply within 7 days of the making of this order with the subsisting order of this Court to show the standing of the aforementioned accounts for further directions.



M.B. IDRIS
JUDGE
5/5/2014

I. Okeke for the Judgment Creditor
B.O. Iheagazie for the Garnishee