

**IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORT HARCOURT**

PMC/SCC/MISC/14/2025

BETWEEN

BLUESKYE OPTIMUM SERVICES LTD..... JUDGEMENT CREDITOR/RESPONDENT

AND

**KEMI RAHMAT ADEYEMI
FEMI JULIUS KORIE
HART IBITAMUNO JONATHAN
BELIEVE EGBULUKA NACHOR**

JUDGEMENT DEBTOR

AND

- 1. FIDELITY BANK**
- 2. ACCESS BANK PLC**
- 3. CITIBANK LIMIED**
- 4. ECOBANK NIGERIA LTD**
- 5. FIRST BANK OF NIGERIA LIMITED**
- 6. FIRST CITY MONUMENT BANK**
- 7. GUARANTY TRUST BANK PLC**
- 8. KEYSTONE BANK LIMITED**
- 9. POLARIS BANK LIMITED**
- 10. STANBIC IBTC BANK PLC**
- 11. STANDARD CHATTERED BANK NIGERIA LIMITED**
- 12. ZENITH BANK PLC**
- 13. STERLIN BANK**
- 14. UNITY BANK PLC**
- 15. UNION BANK OF NIGERIA PLC**
- 16. UNITED BANK FOR AFRICA**
- 17. WEMA BANK PLC**
- 18. PROVIDUS BANK LIMITED**
- 19. SUNTRUST BANK NIGERIA LIMITED**
- 20. PALM PAY LIMITED**
- 21. OPAY DIGITAL SERVICES LIMITED**
- 22. MONIEPOINT MICROFINANCE BANK LIMITED**
- 23. GLOBUS BANK LIMITED**
- 24. SIGNATURE BANK**

GARNIHEE/APPLICANT

Parties – Absent

Appearances- P.C. Ordu appears for the 21st garnishee/Applicant.

RULING

The Applicant filed a motion on the 27/05/2025 and is seeking for the reliefs as set out on the face of the motion paper.

The Application is praying the Court: to extend time within which the Applicant may apply to set aside the garnishee order absolute; to set aside the order absolute on grounds of non-service of hearing notices on the 21st garnishee; an order staying execution of the order absolute pending the hearing of the motion; to discharge the 21st garnishee/applicant as they do not have funds standing to the credit of the judgement debtors. The motion sets out 8 grounds. In support of the motion is an affidavit of 28 paragraphs, three exhibits and a written address. In their written address, they raised and argued one issue.

The Applicant contends that they were denied fair hearing as no hearing notice was served on them, thus derobing the Court of jurisdiction. They filed a further affidavit of 8 paragraphs and a written address on the 17/06/2025. Further thereto is an affidavit deposed to by one Prince Chukwuemeka Ordu of 13 paragraphs, together with a certificate of compliance dated the 17/06/2025.

The judgement creditor/Respondent filed its counter affidavit of 16 paragraphs with two exhibits, on the 04/06/2025. In their written address, they raised and argued one issue for determination. It is their contention that there is no material placed before the Court to warrant the exercise of its judicial and judicious discretion in favour of the Applicant.

I shall adopt the issues raised by parties and reframe them thus:

1. Whether this application has merit.

Prefatorily and before I proceed on resolution of the issues raised, I shall pause to point out that a portion of the paragraphs of the Applicant's affidavit particularly paragraphs 15,16, 19,20,21, 25, offends the Evidence Act 2011 as they contain arguments, law, prayers and conclusions. That is the same with paragraphs 7,8,9 12, 11, 13, 14 of the counter-affidavit and as such, are all incompetent and struck out.

The Court shall further wield its sledge hammer on a document titled 'AFFIDAVIT OF PRINCE CHUKWUEMEKA ORDU IN COUNTER TO PARAGRAPH 9 TO THE FURTHER COUNTER AFFIDAVIT OF THE RESPONDENT FILED ON 04/06/2025.'

As the title reveals, it was deposed to by counsel in this matter in response to paragraph 9 of the counter affidavit filed by the judgement creditor/respondent. That document is unknown to our law, practice and procedure. A glean at the affidavit does not show what authority the deponent has to depose to such affidavit. Furthermore, the law, practice and procedure of our

Courts does not permit a counsel to *suo moto* depose to an affidavit in response to a paragraph in an affidavit by a party, under the guise of 'clearing an air'. Processes are exchanged by parties themselves or through their counsel and shall be so stated. In this case, P.C. Ordu is deposing to an affidavit in his own right, after the Applicant has deposed to an affidavit, a further affidavit and made written addresses. This is alien and incompetent. It is struck out.

Relief one on the face of the motion paper is seeking for enlargement of time. The Court, pursuant to its inherent powers, hereby extends time within which the Applicant may file its motion and the motion filed out of time, is deemed properly filed and served, the appropriate fees, having been paid.

An application for garnishee proceedings is not competent if there is no judgement of Court pronouncing the debt sought to be attached. Section 83 of the Sheriffs and Civil Processes Act, CAP S6, VOL 14, LFN 2004 provides for that. One of the conditions precedent for the Court's assumption of jurisdiction is service of the order nisi on the judgement debtor and garnishees at least 14 clear days before hearing commences.

In the case of **BADA V. ATUNBI (2011) LPELR-9256(CA)**, Mukhtar JCA (as he then was) summarized it all as follows: *"The duty on the Court to notify litigants of hearing date is a constitutional one by virtue of Section 36 of the 1999 Constitution which guarantees every person the right to fair hearing including the right to be notified of the hearing date...This Court in S.P.D.C. Nig Ltd v. Niger Optical Services Co (supra) at p. 435 paras G-H per Ikongbe JCA observed thus: (Citation: (2004) 7 NWLR 'The duty of getting the hearing of a case back on track after disruption is on the Court, not on the litigant or his lawyer. The Court is to notify the parties of the new date fixed after the disruption of hearing. The defendant's duty to appear in Court on the date notified to it to defend the plaintiff's action does not become due until the Court performs its own, that is informs him of the new date. Therefore where the Court is in default of this primary duty, it cannot justifiably hold the defendant to its own duty which is only secondary... A Court must be willing to go an extra mile in satisfying itself that a party to a case has notice of the hearing date. In doing so, the Court would have exercised the requisite caution and satisfied itself that indeed, the parties had due notice.*

It is worthy to state that as shown in the affidavit of service before this Court, the Applicant was served on the 11/03/2025 with the order nisi and one of the orders of the Court is that the garnishees shall attend Court to show cause, if any, as to why it should not pay to the judgement creditor the judgement sums due them. On the face of the order nisi, the date on the order is 10/03/2025 but in order to allow the mandatorily stipulated 14 days, the matter was adjourned to the 14/03/2025 which was clearly written on the face of the enrolled order of the Court served, and then 11/04/2025 to allow them the mandatory 14 days before hearing. The 21st garnishee did not put up appearance nor did they file any process as required by law.

The Applicant at all material times as can be gleaned from paragraph 6 of its affidavit, admitted service of the originating processes on them but that as stated in paragraph 9- *'unfortunately, due to some communication mix-up in respect of the date for hearing between the legal and*

the operations department of the Applicant (the date was wrongly communicated), the Applicant was not represented by either its official representatives or counsel, in Court, at the proceeding of 5th May 2025'

The Applicant is making a heavy weather over they considered as non-service of a hearing notice.

The Applicant is in possession of the order *nisi* of this Court but on its own, disrespected this Court and held its order in contempt, yet turns around to cry that the Court that ordered its appearance did not serve her a hearing notice. One of the cardinal principles of equity is that, '*he who comes to equity must come with clean hands.*' The hands of the Applicant are manifestly soiled and has not been made clean. The Applicant cannot hide under non-service of hearing notice to state that they have been denied fair hearing. By virtue of the service of the originating process, the Applicant became seised of this matter.

In arguing jurisdiction, the Applicant has stated a plethora of authorities and I shall not belabor myself in reproducing them, save to state that the principles contained therein are the correct position of the law. However, they do not apply in this case. This is because, the originating processes as contemplated by those authorities relied on and in the instant case, is the order *nisi*. Pursuant to Section 83 of the Sheriffs and Civil Processes Act, CAP S6, VOL 14, LFN 2004, the Order *nisi*, shall be served on the garnishees and judgement debtor, at least 14 days before hearing commences. That service, amongst other things which the Applicant did not deny, conferred jurisdiction on this Court.

Contrary to the argument of the Applicant that the law does not stipulate time frame within which to file an affidavit to show cause, Section 83 presupposes that the garnishee must have at least 14 days from the date of service of the order *nisi*, to the day of the hearing to show cause. The purpose of the hearing to show cause is to give the garnishee opportunity to show reasons, if any, why the garnishee order *nisi* should not be made absolute. This is why, if the garnishee is served anything less than 14 days, the jurisdiction of the Court has not been properly invoked.

The Applicant in arguing lack of jurisdiction, argued extensively that paragraph 8(h) (i) of the High Court of Rivers State Practice Direction No 2 of 2013 makes it a condition precedent that a garnishee proceeding can only be competent if preceded by a prior verification of funds of the judgement debtor with a garnishee through an application to Court for an order of Court for issuance of a certificate of verification of funds. They further submit that where a party fails to comply with the provisions which are mandatory, the Judge shall strike out the garnishee proceedings.

I shall not run the risk of repeating the argument of the Respondent on this issue. The instant matter was filed not at the High Court of Rivers State but the Small Claims Court.

I shall reiterate that the Small Claims Court is a specialized Court with its laws, one of which is the Practice Direction of 2024. In Article 15 thereof, judgement of the Court shall be

enforced in like manner as any other judgement of the Magistrate Court. What governs garnishee in our courts is primarily the Sheriffs and Civil Processes Act, CAP S6, VOL 14, LFN 2004. That is an Act of the National Assembly and a substantive legislation. The Practice Direction of the High Court is procedural and made under the hand of the Chief Judge. While procedural rules are important for the orderly conduct of cases, they cannot contradict or undermine the substantive rights and obligations established by law. In our jurisprudence and hierarchy of laws, substantive laws take precedence over procedural law.

The Applicant erred when it argued that the Practice Direction of the High Court governs garnishee proceedings. Its argument is largely a misconception, misconstruction and misinterpretation of the law.

It is safe to therefore hold that the jurisdiction of the Court was properly invoked.

Relief two is seeking to set aside the order absolute for failure to issue a hearing notice. This Court has extensively dealt with the issue of hearing notice and shall adopt its position. As can be gleaned from a combined construction of the grounds upon which the motion is set and the averments as contained in the affidavit, the Applicant contends that the order nisi was served on them on the 12/03/ and the adjourned date was 14/03/2025. A cursory look at the endorsement by an officer of the Applicant, they were served by 1:22pm on the 11/03/2025. Meanwhile, on the face of the order, the matter was adjourned to 10/03/2025. Given that the order was served on the Garnishees a day after hearing was to have commenced, a fresh date was taken, which was 14/03/2025, and same was endorsed on the face of the order *nisi*. The presence of most of the counsels representing garnishees in Court on the 14/03/2025 lends credence to the fact that the fresh date was given all parties. The affidavit of service is prima facie proof of service and speaks for itself.

In paragraph 8 of the affidavit in support of the motion, the Applicant vide its deponent averred thus: *'Unfortunately, due to some communication mix-up in respect of the date for hearing between the legal and operations department of the Applicant (the date was wrongly communicated) the Applicant was not represented by either its official representatives or counsel, in Court, at the proceeding of 5th May 2025.'*

In paragraph 9 thereof, the deponent stated thus: *'No hearing notice was served on the Applicant intimating the Applicant that the suit had been adjourned from 5th May to any other date.'*

A juxtaposition of the averments in the Affidavit in support of the motion reveals that the Applicant is speaking from both sides of its mouth and the law frowns at approbating and reprobating. A miscommunication of date between the legal and operations department of the Applicant does not and cannot by any stretch of legal imagination transmogrify to mean that the Applicants were denied fair hearing. They were consistently absent in Court and the Court made the order *nisi*, absolute. The Court then wonders why a date as alluded in paragraph 9 of the Applicant's affidavit, should be communicated to the Applicant. Where the order has been

made absolute, on what legal basis will the Court be commanding the appearance of the Applicant in the same proceedings?

This Court after hearing commenced and the 21st garnishee who is in possession of the order nisi of the Court, chose to stay away throughout, and on the 05/05/2025 made the order nisi absolute against the Applicant. The Court exercised this power, relying on Section 86 of the Sheriffs and Civil Processes Act, supra, which provides that where the garnishee does not amongst other things dispute the debt due, or does not appear upon summons, the Court upon proof of service may order execution to be issue.

Throughout the proceedings leading to the making of the order absolute, the Applicant did not file nor serve its affidavit to show cause as required by law. The Applicant in paragraph 7 of the affidavit in support of the instant motion, smuggled in averments which they expect should be construed as its Affidavit to show cause. That is not what the law contemplates. A further analysis of the averments in paragraph 7 shows that the Applicant '...resolved to inform the Court of this position on the next date for hearing...' the Court cannot wait in perpetuity for the Applicant to inform it of its resolution.

The Applicant in relying on Order 17 of the Magistrate Court civil Procedure Rules 2004 is praying the Court to set aside the order absolute made.

In the celebrated case of **MARK v. EKE (2004) LPELR-1841(SC)**, the Supreme Court dispassionately appraised the conditions when a court would set aside its own judgment and held as follows *per Musdapher, JSC* at page 24, para D-F:

"The law is settled that any court of record including the Supreme Court, see Olabanji v. Odofin (1996) 2 SCNJ 242 at 247; (1996) 3 NWLR (Pt. 4B5) 126, has the inherent jurisdiction to set aside its own judgement given in any proceeding in which there must have been a fundamental defect such as one which goes to the issue of jurisdiction and competence of the Court. See Skenconsult A.C.S. Pic. V. Losada (Nig.) Ltd. (1995) 7 NWLR (Pt. 405) 206; (1995) 7 SCNJ 158 at 168. Such a judgment is a nullity. A person affected by it, is therefore entitled ex debito Justitiae to have it set aside. The court can set it aside suo motu and the person affected may apply by motion and not necessarily by way of appeal. See Adeigbe v. Kusimo (1965) NMLR 284; Ezeokafor v. Ezeko (1999) 6 SCNJ 209 at 225; (1999) 9 NWLR (Pt. 619) 513. This is common sense that if a court makes an order which it has no jurisdiction or competence to make, it has the jurisdiction to rescind the order so as to restore the status quo. See Akinbobola v. Plisson Fisko (Nig.) Ltd. (1991) 1 NWLR (Pt. 167) 270. A judgement or order which is a nullity owing to failure to comply 'with an essential provision such as service of process can be set aside by the Court which gave it or made the order ...In such a case, where the defendant proves non-service on him, the whole proceedings become a nullity and the trial court has the jurisdiction to set it aside...".

In **BARRISTER ORIKER JEV & ORS. V. IYORTOM & ORS. (2015) NWLR (PT. 1483) 484**, the Supreme Court held as follows –” *The Supreme Court possesses inherent power to set aside its judgment in appropriate or deserving cases. Such cases are as follows:*

- (a) *When the Judgment is obtained by fraud or deceit either in the court or of one or more of the parties such a Judgment can be impeached or set aside by means of an action which may be brought without leave;*
- (b) *When the Judgment is a nullity such as when the Court itself was not competent and a person affected by an order of Court which can properly be described as a nullity is entitled ex debito justitiae to have it set aside;*
- (c) *When it is obvious that the Court was misled into giving a Judgment under a mistaken belief that the Parties consented to it;*
- (d) *Where the Judgment was given without jurisdiction; and I Where the procedure adopted is such as to deprive the decision or Judgment of the character of legitimate adjudication.*

From a careful analysis of the grounds set out above, the Applicant has not placed before this Court, materials showing that the instant application falls under that contemplation of the law. Applications are not granted for the asking but cogent and verifiable evidence ought to be led in proof of the reliefs sought.

Setting aside an order or judgement is done pursuant to the inherent powers of the Court and in the exercise of the Court’s discretion. However, this is not just any order or judgement but one which is *sui generis*- emanating from garnishee proceedings.

The Court of Appeal in **NEWS AGENCY OF NIGERIA V ODUNWO (2024) 16 NWLR (PT 1964) 247** stated in page 293 thus: ‘*A garnishee order absolute is a final order. ...it bears/wears the appellation of a final order...*’

The Court went on to state at page 294 as follows: ‘*the moment a Court hands down a garnishee order absolute, it becomes functus officio over the relevant garnishee proceedings before it...*’

The Applicant slept on their right and cannot manipulate/ hoodwink the Court into granting this relief, just because they woke up from their self-induced slumber.

Relief three is seeking an order staying execution of the order absolute made by this Court, pending the hearing and final determination of this motion.

In **ZENITH BANK PLC v. CHIEF ARTHUR JOHN & ORS (2015-01) Legalpedia (SC) 11581**, the apex Court stated thus:

“*A Garnishee Order Absolute means an executed judgment and being a completed act, one wonders how an order of stay can either be ordered or carried out. In this regard, I refer to A. G. Anambra State v Okafor (1992) 2 NWLR (Pt. 224) 396 at 430; Badejo v Federal Minister*

of Education (1996) 1 NWLR (Pt.464) 15". A stay does not proceed against a completed event".

The Court went on to state as follows: "It is settled law that once an execution is completed you cannot order a stay of execution of the judgment already executed. To ask for stay of execution of an executed judgment is like offering a dead man medicine intended to cure his ailment. Put another way, closing the stable after the horse had bolted. Such a request is not grantable by a court of law which does nothing in vain."

ECOBANK PLC v. OLATUNDE FARAYOLA & ORS (2025-02) Legalpedia 07307 (CA)

"As rightly stated by the lower Court if the Appellant is not satisfied with the order of the lower Court making the order nisi absolute, the only option open to it is to appeal against the order absolute." – Per **ABDU DOGO, J.C.A.**

In **S.P.D.C (NIG) LTD & ANOR V. AMADI & ORS (2011) LPELR3204 SC**, the Court per Muntaka Coomassie JSC held that

"... In an application for stay of execution the Court has a primary duty to protect the res from being destroyed, annihilated or demolished. The Court has a duty to ensure that the res is intact, not necessarily for posterity, but for the immediate benefit and pleasure of the party who is finally in victory in the litigation process. This is necessary because if the res is destroyed in the course of litigation before the party gets judgment, then he has no property to make use of in the way he wants as the owner and the direct result in such a circumstance is that the victor has on his land a barren victory, a victory without a difference, an empty victory. He leaves the Court empty handed. In real fact he leaves the Court in victory without victory. If the res is destroyed, annihilated or demolished before the matter is heard on appeal, then this Court will be reduced to a state of hopelessness and that will be bad, very bad indeed. This Court, like every other Court cannot give an order in vain. The Court will then be reduced to a situation where it can bark by the use of its judicial powers under Section 6 (6) of the 1979 Constitution but cannot bite."

I completely agree with the view of his Lordship and I adopt same as mine.

In the instant case, however, there is no appeal filed nor entered. On what basis then shall the Court be staying execution? To my mind, none. I find that Relief three lacks merit, fails, is refused and I so hold.

Relief four is praying the Court to discharge the Applicant as they do not have funds standing to the credit of the judgement debtors.

As has been pointed out in course of this Ruling, the Applicant till date, in flagrant disobedience to the order nisi of this Court, has not shown cause why it should be discharged, in a manner prescribed by law. The attempt made in paragraph 7 of its affidavit in support of its motion is a weak one and not sustainable as it is an after-thought aimed at scuttling the wheel of justice. The duty of a Garnishee upon receipt of Garnishee order nisi is to file before

the relevant Court, an affidavit to show cause why the judgment debtor's money in its custody should not be attached to satisfy the judgment debt. This, the Applicant has not done. There is thus no basis in law for the Court to discharge the 21st garnishee/Applicant. More-so, the Order nisi has been made absolute.

In whole, and from the foregoing, I find that the quantum of this application is vexatious, a waste of judicial time and is brought *mala fide*.

Save for relief one, reliefs 2, 3 and 4 fails, and are dismissed with a cost of N50,000 in favour of the judgement creditor/respondent.

SIGNED

ANUGBUM, OBIARERI NNENDA

CHIEF MAGISTRATE 1

SMALL CLAIMS COURT III

14/07/2025

