

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON THURSDAY, THE 12TH DAY OF JANUARY, 2017.

BETWEEN:

SUIT NO. B/333/11

MICHEAL ABURIME
(TRADING AS TEMPAIR (NIG) ENTERPRISES)

JUDGEMENT CREDITOR/
GARNISHOR/APPLICANT

AND

1. EDO STATE GOVERNMENT
2. ATTORNEY GENERAL OF EDO STATE
3. CHIEF REGISTRAR, HIGH COURT OF
EDO STATE

JUDGEMENT DEBTORS/RESPONDENTS

AND

UNITED BANK FOR AFRICA PLCGARNISHEE/CONTEMNOR/RESPONDENT

RULING

This is a Ruling on a Motion on Notice, brought pursuant to Order 43, Rule 8 of the Edo State High Court (Civil Procedure) Rules, 2012 and under the inherent jurisdiction of this Honourable Court praying for the following:-

- (1) An order committing the contemnor/respondent to prison having failed/refused and/or neglected to obey the order of this Honourable Court made on the 7th of February, 2013; and
- (2) An order directing the contemnor/respondent to pay interest on the Judgment sum of ₦23, 131,553.00 and costs of ₦5, 000 at the prevailing monthly lending rate from February 2013 till the order is completely obeyed.

AND for other order or other orders as this Honourable Court may deem fit to make in the circumstances.

The application is supported by a 10 paragraph Affidavit, a 13 paragraph Affidavit of Urgency, another 10 paragraph Further and Better Affidavit and two Written Addresses of learned Counsel for the Applicant.

Moving the application, the learned Counsel for the Applicant, S.Iredia Osifo Esq., relied on the supporting affidavits and adopted the Written Addresses as his arguments in the motion.

In his 1st Written Address, the learned Counsel formulated two issues for determination as follows:

- i. Whether this Honourable Court can commit the contemnor/respondent to prison for failure to obey the order of this Honourable Court made on the 7th day of February, 2013; and
- ii. Whether this honourable court can direct the contemnor/respondent to pay interest on the judgment sum having refused to pay same into an interest yielding account since the 7th day of February, 2013.

ISSUE 1:

On Issue 1, learned Counsel submitted that this Court can commit the contemnor/respondent to prison for failure to obey the order of Court made on the 7th day of February, 2013.

He maintained that an order of court is meant to be respected by parties to the suit and any party who refuses to obey a subsisting order of court is liable to be committed to prison. He referred the Court to the case of: *AKINYEMI V SOYANWO (2006) 13NWLR (PART 998)496, 514 PARAS B-C* where the Supreme Court held thus:

“It is a settled principle of law that every party to a suit, and indeed every citizen, has an obligation to obey the subsisting court decision or order in the suit unless and until it is set aside. And the party’s obligation to obey the decision is without regard to his perception about the irregularity or illegality of the decision as long as it subsists.”

Counsel also referred to the case of: *DIKIBO V. IBULOYA (2006) 16NWLR (PART 1006) 563* where the Court of Appeal highlighted the preconditions to be met for a contempt proceedings to be valid. He submitted that the conditions have been met in this application.

ISSUE 2:

On the 2nd Issue which relates to the payment of interest on the judgment sum, Counsel submitted that this Court has the power to order the respondent to

pay interest on the judgment sum which they were ordered to pay into an interest yielding account on the 7th day of February, 2013.

He argued that having failed to comply with the said order of court, it is now apt to consider the sum as lent at the prevailing lending rate and he urged the Court to so hold.

Finally, learned Counsel submitted that the facts leading to this application have been succinctly stated in the supporting affidavit and that the respondents will not be prejudiced in any way by the grant of this application.

He therefore urged the Court to grant the prayers sought in the motion paper.

In his 2nd Written Address in support of this Application, the learned Applicant's Counsel submitted that this is a case where the Court can exercise its discretion in favour of the applicants.

He submitted that the contemnor has been in contempt of this court since the 8th day of February, 2013 when this Honourable Court made its order which order they have refused and/or neglected to obey.

He argued that by their further affidavit, the deponent has shown to the court what is obtainable where a transaction as this occurs. He submitted that in this case, the contemnor being the stronger of the parties, decided to use its oppressive powers to oppress the applicant by refusing to pay the money into an interest yielding account as ordered by this Honourable Court.

According to him, the corollary of their action is to be taken as monies borrowed at the official Guaranty Trust Bank lending rate of 21 percent per annum.

Furthermore, he explained that in the ordinary course of its business, the contemnor as a financial institution, also charges a penalty sum amounting to 2 percent flat default monthly charge (amounting to over 24 percent per annum) in addition to the 21 percent annual interest charged on the principal.

Again, he submitted that the applicant is merely requesting for the interest accrued on the money forcibly borrowed by the contemnor since 8/2/2013.

Finally, he referred the Court to Exhibit -FIN Aø attached to their further and better affidavit. Exhibit -FIN Aö was drafted by a financial consultant who also deposed to the further and better affidavit.

He urged the Court to exercise its discretion in favour of the applicant and grant this application.

At the hearing of this application, the learned counsel for the 1st, 2nd and 3rd Judgment Debtors/Respondents, Mrs.V.F.Omage-Dimowo, Senior State Counsel, informed the Court that they are opposing the motion although they did not file any counter affidavit or Written Address. She said that she would rely on the submissions of the learned counsel for the Garnishee.

In opposition to the application, the Garnishee filed a 17 paragraph affidavit, a Written Address of Counsel and a Reply on Points of Law.

In his Written Address, the learned Counsel for the Garnishee/Respondent, Pat Onegbedan Esq.SAN formulated two issues for determination as follows:

1. Whether this honourable Court can commit the contemnor/respondent to prison for failure to pay interest on the judgment when the order to fix the judgment sum on an interest yielding account was directed to the Assistant Director High Court Of Justice, Benin and not to the garnishee; and
2. Whether or not the reconciliatory account prepared by one Peter Adavirke and relied on by the Garnishor for interest claim is known to law.

ISSUE 1

Arguing Issue 1, the learned Senior Advocate submitted that from the material evidence placed before court, what is in issue in this application is not the payment of the Judgment sum, but that of the interest thereof, as claimed by the Garnishor/Applicant, the Garnishee, having paid in full the Judgment sum.

He posited that the question that comes to mind is: Did the ruling of court direct the Garnishee/Respondent to pay interest? He maintained that if the question is resolved either way, the next question is whether the Garnishee was guilty of delay in obeying the order of the court so as to attract the interest purportedly claimed by the Garnishor/Applicant.

He submitted that the judgment of court never directed payment of interest to the Garnishee/Respondent. He said that what the court directed was payment of the judgment sum to the Assistant Director, High Court of Justice, Benin City who in turn, should pay in the said sum into an undisclosed GT Bank interest yielding account.

Counsel informed the Court that after the ruling, the Garnishor/Applicant who stands to lose more if this money remained unpaid went to sleep from 2013 to 30th August, 2016, a period of three years before providing particulars of the Assistant Director, High Court of Justice, Benin City, where the Garnishee/Respondent was to pay in the judgment sum as ordered by court. He referred the Court to Exhibit Æ, the details of the particulars of the Assistant Director, High Court of Justice; Benin City dated 30th August, 2016.

He argued that from Exhibit Æ, it is evident that the Garnishee/Respondent could not have complied with the order of court until the Garnishor/Applicant took the necessary steps on the 30th of August, 2016.

He submitted that the Garnishor/Applicant's posture in turning round to put the blame on the Garnishee/Respondent in the face of his gross indolence, brings to bear, the admonition of Niki Tobi JSC as he then was, in the case of: *UMEANADA V. ATT. GEN., ANAMBRA STATE, (2008) ALL FWLR pt. 416 at 1996 pp. 2011 para C –D* thus:

“Litigation is not the children’s game of hide-and-peek. It is not a game of smartness. It is not a game of artifice or cunning display of a smart conduct designed to overreach or outsmart the adverse party. On the contrary, litigation is a decent, open and not deceitful process of making and defending claims in a court of law. The art and craft of even the most litigious person does not allow him to set a trap with a bait to lure the adverse party, as if he is a fish. That should be left to the fishermen or the keeper of an aquarium, not the court”

In the light of the above, he urged the Court to resolve Issue one in favour of the Garnishee/Respondent, as it has long complied with the order of court on it.

ISSUE 2

On Issue 2, learned Counsel submitted that the reconciliatory account prepared by one Peter Adavirke, to support the claim on interest is unknown to law. He maintained that the necessary guidelines on the rates of interest are given by the Central Bank of Nigeria. On this he referred to the following authorities:

i UBA v. OZIGI (1994) 3 NWLR Pt. 333 at 385 pp. 404 para. B; and

ii OLADEMO v. LAGOS BUILDING INV. O. LTD (2011) ALL FWLR Pt, 592 AT 1769 pp. 1780, para C-D.

He argued that the aforesaid authorities have established that only the Central Bank guidelines duly certified by the appropriate officer of the Central Bank can be used to determine the interest payable by the Garnishee if any at all. He submitted further that any document purporting to reconcile the interest payable by the Garnishee must completely fulfill the requirements of sections 89 (h) & 90 (I) (4) of the Evidence Act.

He submitted that the further and better affidavit supplied by the Garnishor which was basically prepared to work out the interest rate on the Judgment sum together with the annexure on it was prepared by someone who is unknown to law.

He maintained that this is a fundamental defect and the affidavit and the annexure should be struck out and relied on the following authorities:

1. *N.D.I.C. v. KALAYEMI BADERIES & CATERING LTD (2007) Act FWLR pt 357 at 916, pg 928-929 D-C, pg 929- 930, para D-C, pg 9301, para C-A.*
2. *S. 89 (H) AND 90 (I) (E) of the EVIDENCE ACT.*
3. *YESUFU v. ACB LTD (1976)4 SC 1 AT 9 para 35-49. (1976 ALL N.L.R. 264 at 273 (1976)1 NWLR 83 at 96.*
4. *YASSIM v. BARCLAYS BANK D.C.O. (1968) para 5 NLR 171, pg 176 para 10-40 & Pg 177, para 5.*

Counsel further submitted that the court cannot rely on inadmissible evidence such as Garnishor's further and better affidavit to settle a matter before it.

He finally urged the Court to dismiss the application.

At the hearing of this application, the learned Senior Advocate obtained the leave of the Court to adduce further oral arguments in opposition to this application.

Arguing further, he submitted that Order 43 Rule 8 of the Edo State High Court Civil Procedure Rules, 2012 is subject to particular rules of Court. He stated that reliance on the inherent jurisdiction of the Court is not a rule of general application but one meant to supplement a provision of statute. For this he cited the case of: *Akilu vs. Fawehinmi No.2 (1989) 2 NWLR (Pt.102) 122 at 197.*

He maintained that this application cannot come under the inherent jurisdiction of the Court.

The learned Counsel submitted that the application also violates the provisions of sections 57(F), 63, 77 and 82 of the Sheriffs and Civil Process Law of Edo State and Order 4 Rule 8 of the Judgment Enforcement Rules which stipulates that the judgment must be enforced within two years. He referred to the case of: *Ojeme vs.Momodu (1995) 6 NWLR (Pt.403) 583 at 597-598*.

Responding to the further arguments, the learned Counsel for the Applicant submitted that Order 43 Rule 8 of the Edo State High Court Civil Procedure Rules, 2012 is an all encompassing provision which can cover the present application. Furthermore, he submitted that the provisions of sections 57(F) and 63 of the Sheriffs and Civil Process Law are not applicable to this case because they deal with non-monetary judgments unlike the present one.

Furthermore, Counsel maintained that it is settled law that a party cannot be denied any relief merely because he came under a wrong rule or law. For this view, he relied on the case of: *FRIN vs. Gold (2007) 11 NWLR (Pt.1044) 1 at 26*.

Again, he submitted that the Applicant is entitled to enforce the judgment within six years and not two years as posited by the Garnishees counsel. For this submission he also relied on the same Order 4 Rule 8 of the Judgment Enforcement Rules.

On the issue of whether a corporation can be committed to prison, he submitted that a company being a juristic person can be guilty of contempt of court. He maintained that once there is an allegation of contempt, the veil of incorporation will be lifted to hold the principal officers liable. He relied on the decision in the case of: *IBWA vs. Sasegbon (2007) 16 NWLR (Pt.1059) 195 at 216 to 217*.

The learned Counsel for the Garnishor also filed a Reply on Points of Law. In the said Reply; he submitted *inter alia* that when an order of court is made, the parties are meant to obey it strictly and referred the Court to the case of: *Akinyemi V Soyawo (2006) 13 NWLR (Part 998) 496, 514.paras B-C*.

According to Counsel, the question begging for an answer now is: DID THE CONTEMNOR PAY THE SAID SUM TO THE JUDICIARY SO AS TO ENABLE THE ASSISTANT DIRECTOR FORWARD IT TO THE INTEREST YIELDING ACCOUNT?

He answered the question in the negative. He said that they held unto the money for reasons best known to them only to now pass the blame to the applicant as though it was his duty to assist them (suo motu) in obeying the order of court directed at them.

He referred the Court to the case of: *GOJI V. EWETE (2007) 6 NWLR (PART 1029) 72, 81* paras F-H, where the Court of Appeal stated thus:

“It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. Thus, a party who knows of an order whether null and void, regular or irregular cannot be permitted to disobey.”

He submitted that the obligation on the contemnor to obey the order of court made on 7/2/2013 is UNQUALIFIED. Thus, having disobeyed that order, he maintained that they are now liable to be committed for contempt and cannot be heard until they are fully purged of their contempt.

In their issue 2, Counsel submitted that Mr. Peter Adaviriku Aweh who deposed to the further and better affidavit is a person known to law. He has also stated that he is a financial expert.

He also submitted that the reconciliation made by Mr. Peter Adaviriku Aweh is in consonance with the CBN regulations. A Certified True Copy of the CBN regulation was attached as Exhibit CBN 1. This is to enable the applicant establish his entitlement to the interest which the negligence of the contemnor has denied him. See the case of: *U.B.N. Plc Vs IFEOLUWA (NIG) ENT. LTD (2007) 7 NWLR (Part 1032) 71, 84, paras D-F*.

In response to the further oral submissions of the learned counsel for the Garnishor, the learned counsel for the Garnishee submitted that this proceeding is for non payment of interest. He argued that payment of interest was not part of the judgment and to grant the present application will amount to re-writing the judgment. He urged the Court to refuse the application on this ground.

I have carefully considered all the processes filed in this application, together with the arguments of the learned counsel for the parties.

Upon a careful consideration of the Issues for Determination formulated by the parties, I am of the view that the issues formulated by the Garnishor/Judgment Creditor are more apt and I accordingly adopt them with some slight modifications as follows:

1. *Whether this Court can commit the Garnishee/Respondent to prison for failure to obey the order of this Court made on the 7th day of February, 2013; and*
2. *Whether this Court can direct the Garnishee/Respondent to pay interest on the judgment sum having refused to pay same into an interest yielding account since the 7th day of February, 2013.*

Before considering the core issues for determination, I find it expedient to first determine some objections raised by the learned counsel for the Garnishee on the competence of this application.

First is on the objection that this application cannot come under the inherent jurisdiction of the Court because Order 43 Rule 8 of the Edo State High Court Civil Procedure Rules, 2012 on inherent powers is subject to particular rules of Court.

The current trend of justice has shifted from the era of technicalities to that of substantial justice. See: *Odua Investment Co.Ltd. vs. Talabi (1997) 10 NWLR (Pt.523) 1 at 52; and Ojah vs. Ogboni (1996) 6 NWLR (Pt.454) 272 at 292.*

Furthermore, it is settled law that where a party states the wrong law or rule, so long as the relief or remedy is provided for by any written law or common law or equity, the Court can entertain the application on its merits, applying the proper rules .See the following decision on the point: *Onyejike vs. Anyasor (1992) 1 NWLR (Pt.218) 437 at 451 -452; and Bank of Baroda vs. Iyalabani Ltd. (1998) 2 NWLR (Pt.539) 600 at 613.*

I am in agreement with the learned counsel for the Garnishee that the Garnishor ought to have come under some specific rules on enforcement of judgment and committal proceedings for contempt. However, in view of the earlier cited authorities on substantial justice, I am of the view that the failure to come under the proper provisions cannot vitiate the proceedings. I will consider the application on its merits.

Next is on the objection that by virtue of Order 4 Rule 8 of the Judgment Enforcement Rules, the judgment must be enforced within two years.

For the avoidance of doubt, the said Order 4 Rule 8 of the Judgment Enforcement Rules of Bendel State, now applicable to Edo State provides as follows:

õ 8 (1) *As between the original parties, process, otherwise than against the person, may issue at any time within six years, and against the person at any time within two years from the date of the judgment which is immediately sought to be enforced;*

(2) After such periods respectively process shall not issue without leave of the court, but no notice to the judgment debtor before applying for such leave shall be necessary.”

In the case of: *Ojeme vs. Momodu 11(1995) 6 NWLR (Pt.403) 583 at 588*, the Court Appeal, Benin Division, while interpreting the provisions of Order 4 Rule 8 of the Judgment Enforcement Rules of Bendel State, now applicable to Edo State, stated as follows:

“ The judgment sought to be enforced against the persons of the appellants (for that is what a committal proceedings is) was a judgment of Uwaifo J at the Ubiaja High Court on 7th February, 1978. Appeal on it was dismissed by the Court of appeal on the 11th June, 1981. A further appeal to the Supreme Court was dismissed on the 24th March, 1983. I agree entirely with learned Senior Advocate for the Respondents that the date for calculation ...is from the date the Supreme Court judgment was delivered. That was 24th March 1983. Since the committal proceedings was against the persons of the appellants, the respondents had two years from the date of the judgment of the Supreme Court to commence the committal proceedings. This is as required by Order 4 Rule 8 of the Judgments Enforcement Rules Bendel State. The motion for committal was dated 14th December 1988 and filed same day. Thus a period of 5 years 9 months had elapsed from the date of the Supreme Court judgment...No leave was obtained...The motion for contempt was therefore filed out of time without leave. It is therefore incompetent, null and void”

Applying the above authority to the instant application, it would be observed that the order sought to be enforced was made on the 7th day of February, 2013 requiring the Garnishee to pay the judgment debt of N23,131,553.00 (Twenty Three million, one hundred and thirty one thousand, five hundred and fifty three naira) and cost of N5,000.00 (Five thousand naira) awarded in Bank Account No. 01990040000582 with Sort Code Number 033040488 maintained by the 1st Judgment Debtor-Edo State Government, at Akpapkava Road Branch of United Bank for Africa Plc, Benin City to the Edo State Judiciary, High Court of Justice, Benin City forthwith.

The motion for committal is dated 8th August, 2016 and filed same day. Thus a period of 3 years 6 months had elapsed from the date of the order to the date of commencement of the committal proceedings. Like the *Ojeme vs. Momodu case (supra)*, no leave was obtained. The motion for contempt was therefore filed out of time without leave. I agree entirely with the learned Senior Advocate that the application is statute barred.

I am tempted to dismiss the application at this stage without going into the merits. But I will resist the temptation and play safe by still considering the application on its merits.

I will now proceed to resolve the issues *seriatim*.

ISSUE 1:

The issue is whether the Garnishee can be committed to prison for failure to obey the order of this Court made on the 7th day of February, 2013.

For the umpteenth time, I will reproduce the salient terms of the said order as follows:

“ The Garnishee/Applicant is hereby ordered to pay the judgment debt of N23,131,553.00 (Twenty Three million, one hundred and thirty one thousand, five hundred and fifty three naira) and cost of N5,000.00 (Five thousand naira) awarded in Bank Account No. 01990040000582 with Sort Code Number 033040488 maintained by the 1st Judgment Debtor-Edo State Government, at Akpakpava Road Branch of United Bank for Africa Plc, Benin City to the Edo State Judiciary, High Court of Justice, Benin City forthwith. It is further ordered that the said Judgment debt and cost awarded be paid by the Assistant Director, High Court of Justice, Benin City into an interest yielding Account with Guaranty Trust Bank Plc, Sapele Road, Benin City, pending the hearing and determination of the Appeal filed by the Garnishee/Applicant” (Underlining’s mine).

A careful examination of the above order will reveal the following salient facts:

- i. The order was only in respect of the *judgment debt of N23,131,553.00 (Twenty Three million, one hundred and thirty one thousand, five hundred and fifty three naira) and cost of N5,000.00 (Five thousand naira)*. There was no mention of any payment of interest on the said sum;

- ii. The order on payment into an interest yielding account was directed at the Assistant Director, of the High Court of Justice, Benin City and not at the Garnishee; and
- iii. The issue of payment of interest on the judgment debt only surfaced for the first time in this committal proceedings. This is in fact a novelty because further evidence has been adduced at this stage to generate the accumulated interest.

From the foregoing it is evident that the issue of payment of interest which is the subject matter of this committal proceeding was never part of the order of Court which they allege the Garnishee has flouted.

In the case of *Ojeme vs. Momodu* (supra) at p.587, the Court held that: *“Contempt proceedings are quasi criminal in nature; hence proof beyond all reasonable doubt is required. The facts on which the applicants rely must be proved strictly”*.

Furthermore, the burden of proof of contempt is squarely on the applicant. This flows naturally from our law of proof, and it is that he who asserts must prove the veracity of his assertion. See: sections 131 to 137 of the Evidence Act, 2011; *Ojomoh vs. Ijeh* (1987) 4 NWLR (Pt.64) 216; and *Okoya vs. Santili* (1991)7 NWLR (Pt.206) 753 at 767.

In the case of *Ezeji vs. Ike* (1997) 2 NWLR (Pt.486) 164 at 221, Onalaja J.C.A opined thus:

“As the committal proceedings touches on deprivation of freedom of movement and liberty of the person, the service and procedure is applied strictly and any break or departure from strict application of the rules, vitiates the proceedings”.

Sequel to the foregoing I am of the view that the evidence adduced so far cannot sustain a case of contempt against the Garnishee. They did not flout the order of the Court. I agree entirely with the submissions of the learned Senior Advocate that the issue of interest on the judgment debt was not part of the order of Court, neither was it directed at the Garnishee.

In the event, I resolve Issue 1 in favour of the Garnishee/Respondent.

ISSUE 2

The issue is whether this Court can direct the Garnishee to pay interest on the judgment sum having refused to pay same into an interest yielding account since the 7th day of February, 2013.

Having resolved the first issue in favour of the Garnishee, it is apparent that this issue has been overtaken by events. Since it is settled that the Court order did not direct the Garnishee to pay any interest on the judgment debt, it is evident that the issue of payment of interest is another cause of action for which the Garnishor/Applicant can institute a separate suit against the appropriate party.

It is not sufficient to engage the services of a Financial Consultant to prepare a document which they attached as Exhibit "FIN A", to show that the accumulated interest due to the Garnishor amounts to N49, 946,501.30. This figure can be the basis of another law suit to determine the amount of interest payable if any and the person who is to pay the interest.

I therefore resolve Issue 2 in favour of the Garnishee/Respondent.

On the whole, I hold that this application lacks merit and it is hereby dismissed with costs assessed at N10, 000.00 (ten thousand naira) in favour of the Garnishee/Respondent.

P.A.AKHIHIRO
JUDGE
12/01/17

COUNSEL:

1. S. IREDIA OSIFO ESQ. í JUDGMENT /CREDITOR/GARNISHOR/APPLICANT
2. THE ATTORNEY GENERAL, EDO STATE í JUDGMENT DEBTORS/RESPONDENTS
3. PAT ONEGBEDAN S.A. í GARNISHEE/CONTEMNOR/RESPONDENT

