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THE LIMITED RIGHTS OF A GARNISHEE IN GARNISHEE PROCEEDINGS

A Brief Review of the Case of Access Bank Plc Vs Emmanuel Ikpon.

Introduction

One of the challenges encountered while trying to enforce monetary judgments in Nigeria by way of garnishee proceedings is that often, garnishee banks feel obligated to stonewall the judgment enforcement process by asserting certain rights or interests over judgment sums standing in the credit of judgment debtors in their custody. These rights amongst others include right of lien, dispute of liability, etcetra.

In the recent case of Access Bank vs Emmanuel Ikpon & Ors (2025) 18 NWLR (Pt. 2017) 429, the Supreme Court of Nigeria, had to restate the boundaries in terms of the interest or claims a garnishee can assert in a garnishee proceeding(s).

Overview of the case:

In this case, Emmanel Ikpon (Judgment Creditor) obtained judgment at the Federal High Court against Feyad Nigeria Limited and Feyi Adejumo (the 2nd and 3rd Respondents in this appeal). In execution of the judgment, the trial court issued a garnishee order nisi against Access bank Plc (the Appellant), attaching funds standing to the credit of 3rd Respondent. The order was subsequently made absolute, and a writ of execution was issued afterwards. The Judgment Creditor attempted to enforce the order absolute but the Appellant, a mere garnishee, instead of just filing the affidavit to show cause as ordered by the Court, challenged the judgment on the basis that the Federal High Court which tried the subject matter giving rise to the judgment being enforced lacked the jurisdiction to entertain the suit in the first place. The garnishee, moreover, claimed that it had a right of lien or set-off over funds belonging to the judgment debtor in its possession by virtue of a debt owed the bank by the judgement debtor. It therefore applied for the garnishee order be set aside or varied.
However, its application to vary or set aside the order was struck out by the trial court and its subsequent appeal dismissed by the Court of Appeal, hence the appeal to the Supreme Court.

In dismissing the challenge mounted by the Appellant, the Supreme Court held:

1. That a garnishee has no right within the boundaries of garnishee proceedings to claim or assert right of lien, set off or counter claim over the judgment sums in its custody, standing to the credit of a judgment debtor, as that was not the arena for such a fight.

2. That a garnishee does not possess the locus standi to challenge the judgement of court delivered in a substantive suit in which it is not a party as he is a stranger to that suit, this right being only available to parties in the suit.

3. That the role of a garnishee in a garnishee proceeding is limited to disclosure of the state of account of the judgment debtor in its possession, and no more.

4. That the duty of a garnishee in garnishee proceedings is to show cause why funds in its custody standing to the credit of the judgment debtor should not be attached to satisfy the judgment debt.

This is a commendable judgment from the Supreme Court as it spells out the limited roles of garnishees, leaving no room for doubts as to what is required of one in such proceedings. Of interest to us are a few aspects of the decision. The decision reiterates the court's attitude towards garnishee bank(s) in raising jurisdictional challenge to the substantive suit giving rise to the garnishee process. This aspect of the decision re-echoed the Court's position in the previous case of GTB v Innoson (2017) 16 NWLR (Pt.1591)181.

A Rebuke of garnishees meddlesomeness

In the case of GTB v Innoson, the Supreme Court upbraided a garnishee, who rather than confine their fight in a garnishee proceeding decided to challenge the judgment being enforced. The Court described the garnishee asmeddlesome interloper saying:

"Garnishee proceedings are not a process employed by the garnishee to fight a proxy war against the judgment creditor on behalf of the judgment debtor. Accordingly, it does not avail the garnishee to contest the merits of the judgment culminating in the judgment debt. It does not therefore lie in the power or right of the garnishee to contumaciously attack the main judgment which the judgment creditor and the judgment debtor have accepted or are deemed to have accepted, and/or which they have submitted themselves to."

Hon. Justice Eko JSC had this to say to the garnishee in the GTB v Innoson case:

"It is not for a garnishee to fight the cause of a judgment debtor who either accepts the judgment against him and does nothing about it, or who may be indolent to fight his cause. No power in law inheres in the garnishee to make himself a busybody and proceed like Don Quixote, the Knight Errant, to fight the cause of the judgment debtor who is his customer. A judgment debtor whose money or property is seized or attached through garnishee proceedings in excess of the judgment sum has several options in law to deploy to forestall such unwarranted seizure or attachment. It is not for the garnishee to embark on any of such options, which he lacks the locus standi to embark on."

Reiterating this settled position, the Court in the Access Bank v Ikpon case echoed the same rebuke in the following words of Milord, Hon. Justice Abba Aji, JSC :

"A garnishee is simply a third party who is a custodian of the fund of a judgment debtor. A judgment debtor is a person or an entity that has been ordered by a court to pay a sum of money to another party known as the judgment creditor but has not yet complied with the judgment...A garnishee is a third party that is not directly involved in the claim before the court.

He is a stranger to the claim of the judgment creditor and the judgment debtor. He cannot in law dispute the judgment debt... A garnishee has no right to challenge the judgment against a judgment debtor. In the instant case, the appellant as a garnishee, went beyond her mandate to join the fight between the judgment creditor and the judgment debtor."

Garnishee right to lien

A second aspect of the decision is on the right to exercise a lien by a garnishee. The Court held that :
"The garnishee proceeding does not admit of the procedure adopted by the appellant in this case. It is a genre or class of proceedings that excludes the garnishee completely. His right or voice cannot be heard in such a proceeding. He can only go against the judgment debtor, if he has a lien or set off against it, and not deny and frustrate the judgment creditor in reaping the fruit of his judgment. In the instant case, the appellant wrongly initiated an application at the Court of Appeal that it had a lien/set-off on the money the 1st respondent sought to attach inexecution of the judgment that it claimed to be a nullity. The option opened to the appellant was either at the onset of the original suit to seek to join as an interested or adverse party, or to institute a fresh case against the judgment debtor for its money. However, it was belated as that right had already been foreclosed."

Examination of the court's position:

While the decision of the Supreme Court is quite commendable and would discourage the meddlesomeness of garnishees often experienced in judgment enforcement process, the aspect of the decision on the issue of right of lien appears to have overlooked the provisions of Sections 88 and 89 of the Sheriffs and Civil Process Act (SCPA), 2004. The Sections provides that "whenever in any proceedings to obtain an attachment of a debt it is suggested by the garnishee that the debt sought to be attached belongs to a third person or that the third person has a lien or charge upon it, the court may order such third person to appear and state the nature and particulars of his claim upon such debt. Where the third person upon being served a copy of the order to appear, fails to appear to be tried to ascertain the nature of his interest, the Judge has powers to make an order as if such a person had appeared."

In our view, the scope and implication of these statutory provisions is that the garnishee proceedings can accommodate a situation where a garnishee suggests that the debt being attached belongs to a third person or that there is lien or charge on it by a third person.

We also hold the view that the court's position that a garnishee has no right at all to raise the issue of lien in garnishee proceedings is, with respect, too rigid, and does not seem to have accommodated the provision of sections 88 and 89 of the SCPA 2004. Although garnishee proceedings are meant to provide a simple and effective enforcement of monetary judgments, and ultimately, ensure enjoyment of its benefit by a judgment creditor, it seems the proceedings as provided by statute can allows a garnishee to raise the existence of a lien or a charge on a judgment debt.

In our Opinion, the court's stance on this, and the decision of the Court that a garnishee proceeding is not the arena to assert such lien tends to have ignored these provisions. The Court did not expressly strike down these provisions thus creating a situation where judicial pronouncements have to coexist with a contrary statutory provision.

Assuming a garnishee has a genuine claim of lien on a judgment debt, suggesting that he must either join the main suit or file a separate suit seems to be the mischief Sections 88 and 89 SCPA 2004 were made to cure, as garnishees are normally not always joined at the outset of a court action and would not have had any prior knowledge of the action to decide whether to join or not to join.

It is our humble view that a garnishee's right of lien over funds in its custody should be accommodated and determined within a garnishee procedure without being automatically displaced. The statutory provision has not indicated that a garnishee must take out a separate suit, which for good reason, would ensure that a garnishee is not unduly deprived of his lien in favour of a judgment creditor.

Conclusion:

In conclusion, while we commend the Nigerian court for taking decisions to ensure that judgment creditors are not unduly burdened with needless meddlesomeness by garnishees, we are of the view that statute has imposed an obligation to disclose the existence of a lien or charge on the same garnishees. There is a need to strike a balance between both sides within limited bounds to ensure fairness and ultimately, dispensation of unreserved justice.

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