

SUPREME COURT OF NIGERIA

8TH JULY, 2005. SC. 22/2001

**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, A. O. EJIWUN-
MI,
D. MUSDAPHER, S. A. AKINTAN, JJSC**

UNION BANK OF NIGERIA PLC 2ND GARNISHEE/
APPELLANT

AND

BONEY MARCUS IND. LTD PLAINTIFF/JUDGMENT/
CREDITOR/RESPONDENT

AND

NICHIMEN CO. (NIG.) LTD DEFENDANT/JUDGMENT
DEBTOR/RESPONDENT

AND

METCOME (NIG.) LIMITED 1ST GARNISHEE/
RESPONDENT

JUDGMENTS - Orders - Finality of - An order is final - Where it finally disposes the right of parties - But if it does not - Then it is an interlocutory order (H1)

COURTS - Judgments - Judicial decision - Is said to be final - Where it leaves nothing to be judicially determined - That is, the matter will not be brought back to the court - For further adjudication (H2)

APPEALS - Orders - Notice of Appeal - When filed within time - Preliminary objection against it - Will fail (H3)

FACTS

Before the High Court of Abia State in the Osisioma Judicial Division, the plaintiff, Bony Marcus Industries Limited commenced an action against Nichimen Co. Nigeria Ltd. as defendant. Judgment was given in favour of the plaintiff on the 19th May, 1997. The plaintiff

further filed garnishee proceedings praying that it be paid the judgment debt in the hands of Metcome Nigeria Ltd. and Union Bank Nigeria Plc. as garnishees. On the 17th February 1998, the High Court gave ruling in favour of the plaintiff.

Dissatisfied with the ruling, the 2nd garnishee/appellant sent to the registrar of the court on the 25th of February, 1998, a cheque for an amount representing the balance in the 1st Garnishee's account with it. On the 27th. of March, 1998, the said 2nd garnishee (Union Bank Plc.) filed a notice of appeal against the said ruling. The plaintiff raised an objection to the competence of the notice of appeal. The Court of Appeal upheld the preliminary objection and held that the garnishee order made by the High court was an interlocutory decision and the appeal filed on the 27th of March by the 2nd garnishee/appellant was out of time and therefore incompetent. The 2nd Garnishee being dissatisfied, has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

"Whether having regard to the circumstances of the case the final Garnishee Order contained in the Ruling of the court of first instance, (Hon. Justice Mba Uduma at the Osisioma Judicial Division of the High Court of Abia State), dated 17th February, 1998, is an interlocutory or final decision."

HELD (Unanimously allowing the appeal per KATSINA-ALU JSC)

Orders - Finality of

1. There are cases galore decided by this court on this point to the effect that a decision of a court is final when it determines the rights of the parties. It seems to me therefore that the real test for determining this question ought therefore to be this: Does the Judgment or order as made, finally dispose of the rights of the parties? If the Judgment or order has determined the rights of the parties, then it is unquestionably a final order; but if it does not, it is then an interlocutory order. See *Bozson v. Altrincham Urban District Council* (1903) 1 IL 13. SS 47.

Inarguably, the question of what is an interlocutory or final decision before now had engaged the attention of the courts in this country.

However, this court has, in *Omonuwa v. Oshodin & Anor.* (1985) 2 S.C 1 given an authoritative decision on the matter. In that case this court held that:

".....a decision between the parties can only be regarded as final when the determination of the court disposes of the rights of the parties, (and not merely an issue), in the case." (p. 2119 H)

Judgments - Judicial decision

2. The order of the trial court was:

".....that the money belonging to the judgment debtor in possession of the 1st Garnishee, which money is in the 1st Garnishee's Account with the 2nd Garnishee be attached to satisfy the judgment debt, together with the costs of the garnishee proceedings."

The above was the final garnishee order. In other words it was an order absolute. It was a final decision of the court. A judicial decision is said to be final when it leaves nothing to be judicially determined thereafter in order to render it effective and capable of execution. That is to say that the matter would not be brought back to the court itself for further adjudication. Clearly, by the order of the court above, the trial court had determined the rights of the parties before it. I must state again that the appellant promptly complied with the order of the court. (p. 2122 A)

Orders - Notice of Appeal

3. In my judgment, based on the authorities I have cited, the order of 17th February, 1998, was a final order. In effect, the Notice of Appeal filed on behalf of the 2nd garnishee/appellant on 28th February, 1998, was filed within time. In the result. I find no merit in the preliminary objection, which is accordingly overruled.

The appeal therefore succeeds and I allow it. (p. 2122 F)

NOTABLE POINT OF INTEREST

AKINTAN JSC

1. Garnishee order proceedings defined

Garnishee proceedings are a process of enforcing a money judgment by

the seizure or attachment of the debts due or accruing due to the judgment debtor which form part of his property available in execution. It is therefore a species of execution of debts for which the ordinary methods of execution are inapplicable. By this process, the court has power to order a third party to pay direct to the judgment creditor the debt due or accruing due from him to the judgment debtor, or as much of it as may be sufficient to satisfy the amount of the judgment and the costs of the garnishee proceedings. See Words & Phrases Legally Defined, 3rd Edition Vol. 2, page 313-314.

Applications for garnishee proceedings are made to the court by the judgment creditor and the orders of the court usually come in two steps. The first is a garnishee order nisi. Nisi is a Norman-French word and it means “*unless*”. It is therefore an order made at that stage, that the sum covered by the application be paid into court or to the judgment creditor within a stated time unless there is some sufficient reason given by the party on whom the order is directed why the payment ordered should not be made. If no sufficient reason appears, the garnishee order is then made absolute and that ends the matter in that the party against whom the order absolute is made is liable to pay the amount specified in the order to the judgment creditor. The court thereafter becomes functus officio as far as that matter is concerned in that the judge who decided the matter is precluded from again considering the matter even if new evidence or arguments are presented to him. (p. 2123 F)

REPRESENTATION

Mr. J. N. Kanu, for the Appellant
Counsel for the respondents absent.

CASES REFERRED TO

Choice Investments Ltd. v. Jeromnimon (Midland Bank Ltd. Garnishes) (1981) 1 All ER 225 at 328
Words & Phrases Legally Defined, Vol. 2, page 301.
Bozson v. Altrincham Urban District Council (1903) 1 IL 13. SS 47.
Omonuwa v. Oshodin & Anor. (1985) 2 S.C 1
Odutola v. Oderinde (2004) 5 S.C. (Pt. II) 90; (2004) 12 NWLR (Pt. 888) 574
Western Steel Workers Ltd, v. Iron and Steel Workers Union (1986) 3

NWLR (Pt.30) 617

Blakey v. Latham (1889) 43 Ch D at p. 25

Salanan v. Warner (1891) QBD 734 at 736

Akinsanya v. United Bank for Africa Ltd. (1986) 7 S.C. (Pt. 1) 233

STATUTE & RULES REFERRED TO

Sheriffs and Civil Process Law Cap. 118 Laws of Eastern Nigeria, 1963 s. 85
Court of Appeal Rules O. 3 r. 15(1)

LEAD JUDGMENT BY KATSINA-ALU JSC

At the High Court of Abia State in the Osisioma Judicial Division, Boney Marcus Industries Limited as plaintiff, commenced an action against Nichimen Co. Nigeria Limited as defendant in Suit No. HOS/229/96. Judgment was given in favour of the plaintiff on 19th May, 1997.

In due course, the plaintiff filed garnishee proceedings praying that it be paid the judgment debt in the hands of Metcome Nigeria Limited and Union Bank Nigeria Plc. as garnishees.

On 17th February, 1998, the High Court gave a ruling. In it the High Court ordered as follows:

IT IS HEREBY ORDERED, pursuant to Section 85 of the Sheriffs and Civil Process Law Cap. 118, Laws of Eastern Nigeria, 1963, applicable in Abia State, that the money belonging to the judgment debtor in possession of the 1st Garnishee which money is in the 1st Garnishee's Account with the 2nd Garnishee be attached to satisfy the judgment debt, together with the costs of the garnishee proceedings.”

Although dissatisfied with the ruling, the 2nd garnishee/appellant promptly complied with the order embodied therein by sending to the Registrar of the trial High Court on 25th February, 1998, a cheque for an amount representing the balance in the 1st garnishee's account with it. Thereafter, on 27th March. 1998, the 2nd garnishee, Union Nigeria Limited filed a Notice of Appeal against the said ruling. It is as to the competence of that notice that the plaintiff/judgment creditor has raised the objection that has given rise to the present proceedings.

At this stage I wish to point out, although obvious, that the 2nd

garnishee/appellant (Union Bank of Nigeria Plc) was not a party to the proceedings in Suit No. HOS/229/96 which resulted in the judgment sought to be executed by the garnishee proceedings. It is not the decision in that suit against which the appeal under challenge has been filed. The decision in question, as I have shown above, is the decision of 17th February, 1998, making the garnishee order absolute against the 2nd garnishee/appellant. It should be understood that it is to the garnishee proceedings that the 2nd garnishee/appellant was a party and in which it had rights and obligations.

As I have already indicated, the judgment creditor, Boney Marcus Industries Ltd. in its reaction to the appeal filed against the garnishee order absolute, filed a notice of preliminary objection under Order 3 Rule 15 (1) of the Court of Appeal Rules challenging the competence of the appeal for the following reasons:

(i) The ruling made by the court below on the 17th of February, 1998, was interlocutory.

(ii) An appeal against that ruling ought to have been filed within 14 days.

(iii) The Notice of Appeal in this case was filed on the 27th day of March, 1998, and is therefore filed out of time and without leave of court.

(iv) The ruling of the court below made on the 25th day of May, 1998, to the effect that the Notice of Appeal is void and incompetent stands and has not been appealed against.

(v) By reason of the foregoing, the Notice of Appeal is void and the Court of Appeal therefore lacks the jurisdiction to entertain any proceeding based on that.

On 7th December, 2000, the Court of Appeal by a majority decision upheld the preliminary objection and held that the garnishee order absolute made by the High Court on 17th February, 1998, was an interlocutory decision and that the appeal filed on 27th March, 1998, by the 2nd garnishee/appellant was out of time and therefore incompetent. The 2nd Garnishee has further appealed to this court.

In the appellant's brief filed on behalf of the 2nd garnishee, one issue was set down for the determination of this court. It reads:

“Whether having regard to the circumstances of the case the final Garnishee Order contained in the Ruling of the court of first instance, (Hon. Justice Mba Uduma at the Osisioma Judicial Division of the High Court of Abia State), dated 17th February, 1998, is an interlocutory or final decision.”

The plaintiff/judgment creditor filed its respondent's brief. It also raised a sole issue for the determination by this court. It reads:

“Whether the majority decision of the Court of Appeal below to the effect that the decision of the High Court made on the 17th day of February, 1998, was interlocutory and that an appeal therefrom outside fourteen days was incompetent is justifiable.”

I am in complete agreement with the parties that the central question in this appeal is whether the ruling of the Abia State High Court given on 17th February, 1998, was an interlocutory decision or a final decision.

The contention on behalf of the plaintiff/judgment creditor is that the ruling in the garnishee proceedings was an interlocutory decision. Based on this contention, it was submitted that having been filed more than 14 days without the leave of court having been sought and obtained the Notice of Appeal is incompetent.

The issue for determination is simple really. It was needlessly made difficult and complicated by learned counsel for the parties and the court below. The issue is not recondite. There is a plethora of cases decided by this court on this issue.

I do not think it is necessary to review the submission of counsel for the parties except to state that for its part the 2nd garnishee/appellant has contended that the decision of the High Court on 17th February, 1998, is a final decision because it determined the rights of the parties before it. It relied on several cases decided by this court on the point.

This area of law in the Nigerian context need not raise any confusion, ingenuity of counsel notwithstanding. **There are cases galore decided by this court on this point to the effect that a decision of a court is final when it determines the rights of the parties. It seems to me therefore that the real test for determining this question ought therefore to be this: Does the Judgment or order as made, finally dispose of the rights**

of the parties? If the Judgment or order has determined the rights of the parties, then it is unquestionably a final order; but if it does not, it is then an interlocutory order. See *Bozson v. Altrincham Urban District Council* (1903) 1 IL 13. SS 47.

B Inarguably, the question of what is an interlocutory or final decision before now had engaged the attention of the courts in this country. However, this court has, in *Omonuwa v. Oshodin & Anor.* (1985) 2 S.C 1 given an authoritative decision on the matter. In that case this court held that:

C “..... a decision between the parties can only be regarded as final when the determination of the court disposes of the rights of the parties, (and not merely an issue), in the case.”

In *Akinsanya v. United Bank for Africa Ltd.* (1986) 7 S.C. (Pt. 1) 233 this court decided that:

D “.....What renders an order of a court interlocutory or final with respect to a matter before it is its effect on the rights of the parties to the litigation. In all the cases, the test and dominant consideration has been whether the rights of the parties have been finally determined or not.”

E See also *Western Steel Workers Ltd. v. Iron and Steel Workers Union* (1986) 3 NWLR (Pt.30) 617.

This court has recently in *Odutola v. Oderinde* (2004) 5 S. C. (Pt. II) 90; (2004) 12 NWLR (Pt. 888) 574 re-stated the position of the law.

F The court, per Kutigi, JSC., held:

“An order or decision is final when it finally disposes of the rights of the parties, that is to say, the decision or order given by the court is such that the matter would not be further brought back to the court itself, as in this case.”

G Perhaps I should refer to a few English cases which have been adopted in this country. In *Salanan v. Warner* (1891) QBD 734 at 736 Lopes, LJ., in giving a more precise characterization of final judgment or order, said:

H “I think a judgment or order would be final within the meaning of the rules, when whichever way it went, it would finally determine the matter in dispute.”

In *Blakey v. Latham* (1889) 43 Ch D at p. 25 the court said:

“I cannot help thinking that no order in an action will be final unless a decision upon the application out of which it arises, but given in favour of the other party to the action, would have determined the matter in dispute.”

In *Boison v. Altrincham District Council* (1903) 1 KB 547, Lord Alverstone, CJ. in concurrence with Earl of Halsbury, LC., on the point said at pp 549 550:

C “It seems to me that the real test for determining this question ought to be this: Does the judgment or order as made finally dispose of the rights of the parties? If it does, then, I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order.”

D In the instant case, the plaintiff, Boney Marcus Ind. Ltd., obtained judgment against the defendant, Nichimen Co. (Nigeria) Ltd. This was on 19th May. 1997.

E Thereafter the plaintiff filed garnishee proceedings against Metcome (Nig.) Ltd. and Union Bank of Nigeria Plc. to realize the judgment debt and costs. On 17th February, 1998, the trial Judge granted the application and accordingly made an order absolute, the terms of which I have earlier on in this judgment reproduced.

F The 2nd garnishee - Union Bank of Nigeria Plc, filed a Notice of Appeal on 27th March, 1998, against that ruling. The plaintiff raised a preliminary objection to the competence of that notice on the ground that the appeal was filed out of time. It was the plaintiff’s contention that the garnishee order absolute was an interlocutory decision, and that being so, an appeal against it should and must be filed within 14 days. The court below ruled that the garnishee order absolute was an interlocutory decision.

G The question to be resolved in this appeal is really whether the decision of the trial court was interlocutory or final. I think the resolution of this question would depend on whether the garnishee order as made H disposed of the rights of the parties before the court.

The order of the trial court was:

“.....that the money belonging to the judgment debtor in

2122 Union Bank Plc v. Boney Marc. Ltd. (2005) 7 KLR Katsina-Alu JSC
possession of the 1st Garnishee, which money is in the 1st Garnishee's
Account with the 2nd Garnishee be attached to satisfy the judgment
debt, together with the costs of the garnishee proceedings."

B The above was the final garnishee order. In other words it
was an order absolute. It was a final decision of the court. A judicial
decision is said to be final when it leaves nothing to be judicially
determined thereafter in order to render it effective and capable of
execution. That is to say that the matter would not be brought back
to the court itself for further adjudication. Clearly, by the order of the
C court above, the trial court had determined the rights of the parties
before it. I must state again that the appellant promptly complied
with the order of the court.

This court, in *Odutola v. Oderinde* (2004) 5 S.C. (Pt. II) 90; (2004)
12 NWLR (Pt. 888) 574 re-stated the position of the law in this respect.

D The court, per Kutigi, JSC., held:

"An order or decision is final when it finally disposes of the rights
of the parties, that is to say, the decision or order given by the court is
such that the matter would not be further brought back to the court itself,
E *as in this case."*

See *Akinsanya v. United Bank for Africa Ltd.* (supra); *Western*
Steel Workers Ltd. v. Iron & Steel Workers Union (supra), *Omonuwa v.*
Oshodin & Anor. (supra).

F In my judgment, based on the authorities I have cited, the
order of 17th February, 1998, was a final order. In effect, the Notice
of Appeal filed on behalf of the 2nd garnishee/appellant on 28th Feb-
ruary, 1998, was filed within time. In the result. I find no merit in the
preliminary objection, which is accordingly overruled.

G The appeal therefore succeeds and I allow it. The decision of
the court below is set aside. The plaintiff/judgment creditor/objector shall
pay costs of N100,000.00 in this court and N5,000.00 in the court below
to the 2nd garnishee/appellant.

KUTIGI JSC.

H I read in advance the judgment just delivered by my learned broth-
er, Katsina-Alu, JSC. I agree with him that the garnishee order absolute

Union Bank Plc v. Boney Marc. Ltd. (2005) 7 KLR 2123
made by the High Court on 17th February, 1998, was a final order. The
appeal therefore succeeds and it is hereby allowed. The decision of the
court below is set aside. I endorse the order for costs.

EJIWUNMI JSC

As I have had the opportunity of reading the draft of the judgment
just delivered by my learned brother, Katsina-Alu, JSC'.. I also allow the
appeal for the reasons given in the said judgment. I also make the same
orders made with regard to costs.

MUSDAPHER JSC

I have read before now the judgment of my Lord, Katsina-Alu,
JSC., with which I entirely agree. For the same reasons which I adopt D
as mine, I too find this appeal meritorious and it is allowed by me. The
decision of the lower court in upholding the preliminary objection is set
aside, in its place, the preliminary objection is dismissed. I abide by the
order for costs contained in the aforesaid judgment.

AKINTAN JSC

The main issue raised in this appeal is whether a garnishee order
made absolute by a court is an interlocutory or final order. Garnishee pro-
ceedings are a process of enforcing a money judgment by the seizure or F
attachment of the debts due or accruing due to the judgment debtor which
form part of his property available in execution. It is therefore a species
of execution of debts for which the ordinary methods of execution are
inapplicable. By this process, the court has power to order a third party to G
pay direct to the judgment creditor the debt due or accruing due from him
to the judgment debtor, or as much of it as may be sufficient to satisfy the
amount of the judgment and the costs of the garnishee proceedings. See
Words & Phrases Legally Defined, 3rd Edition Vol. 2, page 313-314.

H Applications for garnishee proceedings are made to the court by
the judgment creditor and the orders of the court usually come in two steps.
The first is a garnishee order nisi. Nisi is a Norman-French word and it
means "unless". It is therefore an order made at that stage, that the sum

covered by the application be paid into court or to the judgment creditor within a stated time unless there is some sufficient reason given by the party on whom the order is directed why the payment ordered should not be made. If no sufficient reason appears, the garnishee order is then made absolute and that ends the matter in that the party against whom the order absolute is made is liable to pay the amount specified in the order to the judgment creditor. The court thereafter becomes functus officio as far as that matter is concerned in that the judge who decided the matter is precluded from again considering the matter even if new evidence or arguments are presented to him. See: Choice Investments Ltd. v. Jeromnimon (Midland Bank Ltd. Garnishes) (1981) 1 All ER 225 at 328; and Words & Phrases Legally Defined, Vol. 2, page 301.

During the period between when the order nisi and the order absolute are made, the matter would still be pending before the court. In other words, the proceedings would still be at the interlocutory stage. But once the order absolute is made, there would be nothing left before the court in the matter. The court has, at that stage, completely determined the matter between the parties as far as the proceedings are concerned. The court would be functus officio. There would then be nothing left to be determined by the court. The question of the proceedings at that stage being interlocutory would therefore not arise.

For the above reason and the fuller reasons given in the leading judgment written by my learned brother, Katsina-Alu, JSC, which I had read before now. I agree that the garnishee order made absolute by the trial High Court was a final order and not interlocutory. I therefore agree with the conclusions made in the leading judgment that the appeal should succeed. I too allow the appeal and set aside the decision of the court below with costs as assessed in the leading judgment.