

SUPREME COURT OF NIGERIA
25TH APRIL, 2008 SC. 349/2002
CORAM:- S. U. ONU, D. MUSDAPHER, A. M.
MUKHTAR, I. F. OGBUAGU, P. O. ADEREMI, JJSC

CHIEF M. O. OLATUNJI APPELLANT
AND
1. OWENA BANK PLC.
2. ORE-OLUWA FALANA RESPONDENTS

JUDGMENTS - Execution of - Writ of *fifa* - When due - A writ of *fifa* may issue for enforcement of a judgment - Immediately upon pronouncement of the judgment - As a matter of course - Without leave (H1)

JUDGMENTS - Effective date of - Payment of money - Sheriffs and Civil Process Act s. 20(1) - Judgment of court to pay money - Takes effect from the day it is given - Unless it is otherwise ordered by the court (H2)

RULES OF COURT - Applicability - Judgment Enforcement Rules O. IV, r. I (1) & (2) provisions - Do not apply to enforcement of judgment - For the payment of money (H3)

FACTS

The Plaintiff/Appellant was the owner of a saw Mill Factory at Ado Ekiti. On the 13th of August, 1997, the 2nd Defendant/Respondent had as agent of and on the instruction of the 1st Defendant/Respondent removed all the saw mill equipment. Appellant demanded the return of the equipment to no avail. Consequently, he sued the Respondents at the Ado Ekiti High Court for the return of the equipment and for damages for their wrongful and illegal removal. The court in its judgment delivered on 21/3/2000 did not order for the return of the equipment but awarded damages in the sum of N30,793,000.00 in favour of the Appellant. As judgment creditor, the Appellant, on the same date the judgment was delivered, applied for and obtained a Writ of Execution of the judgment

to enforce payment of the judgment debt. The writ was served on the 1st Respondent four days later.

The 1st Respondent issued its own bank draft for the total sum of the judgment debt to the Appellant, but on the following day filed a motion on notice praying the court for an order setting aside the execution of judgment levied by the Appellant on the ground that “it was conducted illegally, unlawfully and in flagrant violation of law calculated to overreach the decision of the court in the motion for stay filed and pending in the court”. The motion for stay had been filed by the Respondents on the day on which the judgment was delivered, the same day on which Appellant had sought and obtained a Writ of Execution. After hearing the motion to set aside, the relief sought by Respondents were granted and the execution was set aside. Appellant’s appeal to the Court of Appeal was dismissed, hence he has brought this further appeal to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether the application for and the issuance of a Writ of Execution of judgment for sum of money payable under a judgment immediately after delivery of judgment is invalid under the Sheriffs and Civil Process Act or the Rules made there under?”

HELD (Unanimously allowing the appeal for **MUSDAPHER JSC**) **JUDGMENTS - Execution of - Writ of fifa**

1. The question may be asked when does a judgment to pay a sum of money becomes recoverable. Can a judgment creditor apply for a Writ of FIFA immediately a judgment is pronounced or must a judgment creditor wait for a default or failure to satisfy the judgment debt or must the judgment creditor wait for 14 days or 3 days after the judgment?

The practice which is well established for many years, is clear, that a Writ of FIFA may issue immediately upon payment becoming due upon a pronouncement in a judgment and as a matter of course without leave and without the necessity of a prior notice to; or for prior service of the judgment or order upon the judgment debtor. Accordingly, a judgment requiring the defendant to pay money to the plaintiff, enforceable by Writ of FIFA immediately it is entered even though no time is specified for the payment to be made and

even though notice of the judgment, still less the judgment itself, has not been served on the debtor. To answer the issue, I hold that a judgment to pay money as in this case is recoverable by the issuance of a Writ of FIFa immediately the judgment is pronounced. It is only when the judgment debt is fully satisfied that can render the issue of the writ of execution void. (pp. 1837 G/1839 A)

JUDGMENTS - Effective date of

2. In my view, unless the court otherwise orders, a judgment of court to pay money takes effect from the day it is pronounced or delivered in court. However, the court at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done. A person directed by a decree or order of court to pay money or to do any other act is bound to obey the decree or order without any demand for payment or performance, and if no time is therein expressed he is bound to do so immediately the decree or order is pronounced. That is the language and meaning of the provisions of Section 30(1) of the Sheriffs and Civil (Process) Act. This makes sense, for it behoves a successful plaintiff to act promptly, lest he loses the fruits of his victory.

I am of the decided view that the key words under Sections 20(1) of the Act are “*recovered*” “*forth with.*” In the case of *Intercontractors Nigeria Ltd, v. U.A.C. Of Nigeria Ltd*, supra or (1988) (Pt. I) Vol. 19 NSCC 737 at 752. This court per Karibi- Whyte, JSC, stated:-

“It is well settled that every judgment takes effect on pronouncement - see Bank of West Africa Ltd, v. NIPC Ltd. (1962) LLR 31, Olayinka v. Elusanmi (1971) 1 NMLR 277. A judgment debtor seeking to stay the execution must show that he is challenging the judgment, or is asking for time to comply with the terms of the judgment.” (p. 1837 H)

RULES OF COURT - Applicability

3. The provisions of Order IV Rule I (1) and (2) in my view do not apply to the enforcement of judgment for the payment of money. Clearly Rule I (1) talks of the issuance of a Writ of Possession which does not have any bearing on the issue for the payment of money.

Rule 1(2) talk of “No other process” and process has been defined under the rules as” one of interim attachment warrant to arrest an absconding defendant warrant to arrest a ship and judgment summons.” The “process” referred to here does not include Writ of Attachment issued under Section 80 of the Act. The Court of Appeal was clearly in error to have held that Order IV Rule 1(2) “applies to all other judgments other than Judgment for the Writ of Possession.” (p. 1838 F)

REPRESENTATION

V.O. Awomolo, (with her, Eyitoyi Fatogun and Zainab Ibrahim), for the Appellant.
Titilola Akinlawon, for the Respondents.

CASES REFERRED TO

Intercontractors (Nig.) Ltd v. UAC of Nigeria Ltd. (1988) 2 NWLR (Pt 76) 303
Bank of West Africa v. NIPC Ltd. (1962) LLR 31
Olayinka v. Elusanmi (1971) 1 NMLR 227
See Land Creditor Company of Ireland v. Fermoy (1870) LR 4 Ch. 323
Hopton v. Robertson (1884) WN 77, 23 QBD 126
Eguamwense v. Amaghizemwen (1993) 9 NWLR (Pt. 315)
Total Nigeria Plc, v. Moshood Adeleye Akinpelu & Ors. (2000) 21 WRN 76
Bayero v. Crusader Insurance Company Ltd. (1998) 6 NWLR (Pt. 553) 214
Liverpool Borough Bank v. Turner (1861) 30 LJ Ch. 379
G Total v. EMCC (1972) 8-9 S.C. 64; (1972) 8-9 S.C.

STATUTE & RULES REFERRED TO

Sheriffs and Civil (Process) Act, Cap. 407, LFN, 1990, ss. 20(1), (2) and (3), and 94(1)
H Judgment (Enforcement) Rules made under the Sheriffs and Civil (Process) Act O. IV r. 1 (1) and (2)

BOOK REFERRED TO

LEAD JUDGMENT BY MUSDAPHER JSC

The appellant herein was the plaintiff, he was an owner of a Saw Mill Factory at Ado Ekiti. On the 13th of August, 1997, the first respondent herein appointed and instructed the second respondent a licensed auctioneer, to remove vi et armis all the saw mill equipments. The appellant demanded the return of the equipment without success. He sued at Ado Ekiti High Court for the return of the equipments and for damages for wrongful and illegal removal of the equipments. The High Court in its judgment delivered on the 21/3/2000, did not order for the return of the equipments but awarded damages in the sum of N30, 793, 000.00 in favour of the appellant against the respondents. The appellant as the judgment creditor immediately on the same date i.e 21/3/2000 applied for a Writ of Execution of the judgment to enforce the payment of the judgment debt. The writ was issued on the same day but was served on the 1st respondent on the 27/3/2000. The 1st respondent accepted the service of the writ and issued its own bank draft for the total sum of the judgment debt aforesaid.

On the 28th day of March, 2000, the respondents herein as applicants filed a Motion on Notice praying for:-

“An Order of court setting aside the execution of judgment levied by the plaintiff/judgment creditor/ respondent in this suit on 27th day of March, 2000, on the ground that the said execution was conducted illegally, unlawfully and/or flagrant violation of law calculated to overreach the decision of this court in motion for stay filed and pending in this court.”

It appears that the respondents had on the same 21/3/2000 filed a motion to stay the execution of the judgment pending appeal which was also filed on the same date.

It was the motion to set aside the execution of the judgment on which the 1st respondent had issued a cheque in settlement thereof that resulted in this appeal. The learned trial Judge in his consideration of the motion to set aside the execution of the judgment held:-

“xxxxxxx I hold that the requirement of Order IV Rule 1 (2) of the Sheriffs and Civil Process Act, Cap. 407, Laws of the Federation

was not complied with in this case before the Writ of Execution was issued. The Writ of Execution in this case ought not to have been issued on the 21st day of March, 2000, the very day the judgment of the court was delivered. The Writ of Execution issued in this case on the 21st day of March, 2000 and the execution levied xxxxxxxx on the 27th March, 2000, are “hereby set aside xxxxxxxxxxxxxxxx.”

The appellant felt unhappy with the ruling and filed a Notice of Appeal. The Court of Appeal, Ilorin in its consideration of the matter before it, discussed the following provisions:-

- “(i) Section 20 Sheriffs and Civil Process Act.
- “(ii) Section 94(1) Sheriffs and Civil Process Act.
- “(iii) Order IV Rules 1(2), 5 and 16 of the Judgment (Enforcement) Rules.
- “(iv) Section 2 Part I Judgment (Enforcement) Rules.”

The Court of Appeal considered two issues. It is the second issue that is concerned in this appeal. The second issue reads thus:-

“Whether the Writ of Attachment for sum of money, which was signed on 21/3/2000 and executed on 27/3/2000, was irregular and unlawful?”

In its judgment, the Court of Appeal resolved issue No. 2 recited above against the appellant. It held that issuance and the execution of the Writ of Attachment was irregular and unlawful. It is against the Judgment that the appellant has now further appealed to this court. The Notice of Appeal filed contained two grounds of appeal. In his Brief for the appellant, the learned counsel has identified the following issue as arising for the determination of the appeal. The issue reads:-

“Whether the application for and the issuance of a Writ of Execution of judgment for sum of money payable under a judgment immediately after delivery of judgment is invalid under the Sheriffs and Civil Process Act or the Rules made there under?”

The respondent’s issue is not different from the one submitted by the appellant. It is submitted by the learned counsel for the appellant that a judgment of a court becomes effective and can be enforced from the moment of its pronouncement, until the judgment or order is vacated, discharged or set aside by the court or a superior court on appeal.

Learned counsel relies and cites the cases of *Intercontractors (Nig.) Ltd v. UAC of Nigeria Ltd.* (1988) 2 NWLR (Pt 76) 303, *Bank of West Africa v. NIPC Ltd.* (1962) LLR 31, *Olayinka v. Elusanmi* (1971) 1 NMLR 227. It is further submitted that the provisions of Section 20(1)-(3) of the Sheriffs and Civil (Process) Act, give the right to a judgment creditor and entitles him to recover judgment forth-with by an application to the registrar for a Writ of Attachment and sale of attached goods, unless the judgment stipulates a particular date or time of payment. B

It is further argued that in view of the clear meaning of the words in the Act in Section 20(1)-(3), Order IV Rule 1(2) of the Rules does not apply for money payable under a judgment and if it did, it is in conflict with Section 20(1) and where a conflict exists between a substantive law the rule or order in a subsidiary legislation must give way. See *In Re Fletcher* (1956) Ch. 28. C D

It is further added that the practice in England with respect to the recovery of money supports the provision of Section 20 of the Act. See Order 45 Rule 1(6) of the Supreme Court Practice, 1985. See also Halsbury's Laws of England 3rd Edition, Volume 22 paragraph 1658. Writ of FIFa may issue immediately whenever a judgment is pronounced without notice to the judgment debtor-See *Land Creditor Company of Ireland v. Fermoy* (1870) LR 4 Ch. 323, *Hopton v. Robertson* (1884) WN 77, 23 QBD 126. Re: a Solicitor (1884) 33 WR 131. E

It is further stressed that, where right and remedies coexist in the same statute such as in Sections 20-23 of the Sheriffs and Civil Process Act, one cannot be disassociated from the other. See: *Eguamwense v. Amaghizemwen* (1993) 9 NWLR (Pt. 315). Order IV Rule 1(1) and (2) relate only to possession of land and does not extend to the execution of judgment where money was only involved. The provisions of Order IV Rule 1(2) cannot be used or involved to restrict, abridge or inhibit or redirect the provisions of the substantive law. The rules made under a statute cannot take away rights expressly conferred in a substantive statute. See *Total Nigeria Plc, v. Moshood Adeleye Akinpelu & Ors.* (2000) 21 WRN 76. F H

The learned counsel for the respondent on the other hand, submit that the relevant statutory provisions to this appeal are Sec-

tions 20(1), 20(2) of the Sheriffs and Civil (Process) Act, Cap. 407, LFN 1990 and Order IV Rule 1(2) of the Judgment (Enforcement) Rules made under Cap. 407, LFN 1990. It is submitted that a judgment creditor cannot proceed forthwith on the same day on which the judgment was delivered to issue a Writ of Attachment pursuant to
 B Section 20(2) unless the judgment debtor has defaulted or failed to pay the judgment sum.

It is again submitted that Section 20(1) is only permissive or discretionary in the sense that it only permits the recovery of the
 C judgment sum by the judgment creditor. This is to be distinguished from the mandatory provisions of Section 20(2) dealing with the duty imposed on the Registrar, who “*shall cause Writ of Attachment to be issued.*” It is again argued that there are other provisions of the Act, which provide for time and manner for levying execution and
 D effect must be given to those provisions. The provisions of Order IV Rules (1) and 4 of the Judgment (Enforcement) Rules, are designed to complement and explain the provisions of the Act and they form integral part of it.

It is again submitted that if the court upholds the appellant’s
 E contention, it will lead to absurdity in the sense that if a judgment creditor is to proceed to levy execution immediately on all the judgment debtors’ assets even on the judgment debtor’s immovable properties this will definitely go against the grain that it is only after no
 F movable assets are available to satisfy the judgment debt, it may then proceed against the immovable assets.

It is further submitted that by the clear provisions of Order IV Rule (2), the appellant must comply with the provisions of the order and the “*process*” cannot be issued “*until*” the expiration of fourteen
 G days from the day on which judgment is given. It is again stressed that Order IV Rule (2) is a mandatory order and can only be bypassed with the leave of court. See *Bayero v. Crusader Insurance Company Ltd.* (1998) 6 NWLR (Pt. 553) 214, *Liverpool Borough Bank v. Turner* (1861) 30 LJ Ch. 379.

H It is again submitted that Order IV is not in conflict with the provision of Section 20 of the Act and the order applies to judgment for the recovery of money. It is further argued that the *Akinpelu*’s case can be distinguished from this case in that the provisions of Or-

der IV Rule 1 (2) of the Judgment (Enforcement) Rules, did not feature for consideration.

Now, it is agreed by both the appellant and the respondents that the relevant statutory provisions that fall for consideration in this appeal are:-

“Section 20 (1) of the Sheriffs and Civil (Process) Act and Section 20(2) and Order IV Rule 1(1) and 2 of the Judgment (Enforcement) Rules, made pursuant to Section 94 of the aforesaid Act. The provisions read:-

Section 20 (1)

Any sum of money payable under a judgment of a court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times and in the manner thereby directed, by execution against the goods and chattel and the immovable property of the judgment debtor in accordance with the provisions of this Act.

Section 20 (2)

The Registrar on the application of the judgment creditor shall cause to be issued a Writ of Attachment and sale whereby the sheriff shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the division or district of the court, the money payable under the judgment and the costs of the execution.”

Order IV Rule I and Rule II Judgment (Enforcement) Rules, made pursuant to Section 94 of the Act read:-

Rule 1

No Writ of Possession shall be issued until after the expiration of the day on which the defendant is ordered to give possession of the land, or, if no day has been fixed by the court for giving possession, until after the expiration of fourteen days from the day which the judgment is given.”

Now, considering these provisions, ***the question may be asked when does a judgment to pay a sum of money becomes recoverable. Can a judgment creditor apply for a Writ of FIFIA immediately a judgment is pronounced or must a judgment creditor wait for a default or failure to satisfy the judgment debt or must the judgment creditor wait for 14 days or 3 days after the judgment? In my view, unless the court otherwise***

orders, a judgment of court to pay money takes effect from the day it is pronounced or delivered in court. However, the court at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done. A person directed by a
B decree or order of court to pay money or to do any other act is bound to obey the decree or order without any demand for payment or performance, and if no time is therein expressed he is bound to do so immediately the decree or order is pronounced. That is the language and meaning of the provisions
C of Section 30(1) of the Sheriffs and Civil (Process) Act. This makes sense, for it behoves a successful plaintiff to act promptly, lest he loses the fruits of his victory. See *Bank of West Africa Ltd v. National Investment & Properties Co. Ltd*, supra, *Olayinka*
D v. Elusanmi (1971) NMLR 277, Dada v. The University of Lagos & Ors. (1971) 1 Uni. Ife Cr. 344.

I am of the decided view that the key words under Sections 20(1) of the Act are “recovered” “forth with.” In the case of Intercontractors Nigeria Ltd, v. U.A.C. Of Nigeria Ltd, supra or (1988) (Pt. I) Vol. 19 NSCC 737 at 752. This court per
E Karibi- Whyte, JSC, stated:-

“It is well settled that every judgment takes effect on pronouncement - see Bank of West Africa Ltd, v. NIPC Ltd. (1962) LLR 31, Olayinka v. Elusanmi (1971) 1 NMLR 277. A
F judgment debtor seeking to stay the execution must show that he is challenging the judgment, or is asking for time to comply with the terms of the judgment.”

Now, the provisions of Order IV Rule I (1) and (2) in my
G view do not apply to the enforcement of judgment for the payment of money. Clearly Rule I (1) talks of the issuance of a Writ of Possession which does not have any bearing on the issue for the payment of money. Rule 1(2) talk of “No other process” and process has been defined under the rules as”
H one of interim attachment warrant to arrest an absconding defendant warrant to arrest a ship and judgment summons.” The “process” referred to here does not include Writ of Attachment issued under Section 80 of the Act. The Court of

Appeal was clearly in error to have held that Order IV Rule 1(2) “applies to all other judgments other than Judgment for the Writ of Possession.” A ‘Writ of FIFA may issue to enforce a judgment or order for the payment to, or for the recovery by, any person of money. ***The practice which is well established for many years, is clear, that a Writ of FIFA may issue immediately upon payment becoming due upon a pronouncement in a judgment and as a matter of course without leave and without the necessity of a prior notice to; or for prior service of the judgment or order upon the judgment debtor.*** See Land Credit Coy of Ireland v. Fermoy supra. ***Accordingly, a judgment requiring the defendant to pay money to the plaintiff, enforceable by Writ of FIFA immediately it is entered even though no time is specified for the payment to be made and even though notice of the judgment, still less the judgment itself, has not been served on the debtor. To answer the issue, I hold that a judgment to pay money as in this case is recoverable by the issuance of a Writ of FIFA immediately the judgment is pronounced. It is only when the judgment debt is fully satisfied that can render the issue of the writ of execution void.*** See Total v. EMCC (1972) 8-9 S.C. 64; (1972) 8-9 S.C. (Reprint) 44. See also Far East Merchantile v. Phillips (1974) 11 S.C. 225; (1974) 11 S. C. (Reprint) 165.

Having resolved the only issue canvassed by both the appellant and the respondents in favour of the appellant, this appeal succeeds and is allowed by me. I set aside the decisions of the lower courts. I hold that the Writ of Attachment was regularly and lawfully issued. I award the appellant costs at the High Court, Court of Appeal and in this court at N3, 500.00, N7, 500.00 and N50, 000.00 respectively jointly against the respondents.

ONU JSC

Having been privileged to have a preview of the judgment of my learned brother, Dahiru Musdapher, JSC., just delivered, I am in agreement with him that the appeal succeeds.

Accordingly, I too allow the appeal and have nothing more to add thereto.

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MUKHTAR JSC

I have had the advantage of reading in advance the leading judgment delivered by my learned brother, Musdapher, JSC. He has thoroughly tackled and dealt with the sole issue for determination identified by the appellant to my satisfaction. I have nothing else to add, than to agree entirely with the reasoning and conclusion reached in the judgment that the appeal be allowed. I also allow the appeal and abide by the consequential orders made in the leading judgment.

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OGBUAGU JSC

E On 28th January, 2008, when this appeal came up for the appellant appearing with two other learned counsel, adopted their Brief and urged the court to allow the appeal and set aside the decision of the court below.

Akinlawon, (Mrs.)- learned counsel for the respondents, also adopted their Brief. He/She told the court that the case of Total (Nig.) Plc, v. Akinpelu (2000) 2 WRN 76, is distinguishable and that it is inapplicable to the instant appeal. He/she however, urged the court, to dismiss the appeal, judgment was thereafter reserved till today. With respect, since in substance, there is in my view, one (1) crucial issue for determination in this appeal, for purposes of emphasis, in my respectful view, the provisions of Section 20(1) of the Sheriffs and Civil (Process) Act, are clear, unambiguous and need no interpretation. See the cases of Bank of West African Ltd. v. NIPC Ltd. (1962) LLR 31 and Olayinka v. Elusanmi (1971) 1 NMLR 277 cited/referred to in the case of Intercontractors (Nig.) Ltd. v. UAC of Nigeria Ltd. (1988) 2 NWLR (Pt. 76) 303 at 324, cited and relied on in the appellant's Brief (it is also reported in (1988) 4 SCNJ 131; (1988) Vol. 19 NSCC (Pt. I) 737 at 752) - per Karibi-Whyte, JSC.

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I had the privilege of reading before now, the leading judgment of my learned brother, Musdapher, JSC., just delivered. I agree with his reasoning and conclusion. I adopt the same as mine. The appeal succeeds and I too, allow it. I abide with the consequential orders contained therein including that in respect of costs.

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ADEREMI JSC

I agree with my learned brother, Musdapher, JSC., whose reasons for judgment I have had a privilege of a preview.

As I have nothing useful to add, I would like to adopt the judgment as mine. I abide by all the consequential orders therein contained including the orders as to costs.

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