

**SUPREME COURT OF NIGERIA**  
FRIDAY 22ND JANUARY, 2016. SC. 337/2013  
**CORAM:- I. T. MUHAMMAD,**  
**M. S. MUNTAKA-COOMASSIE, O. RHODES-VIVOUR,**  
**C. B. OGUNBIYI, C. C. NWEZE, JJSC**

BARBEDOS VENTURES LTD ..... APPELLANT/APPLICANT  
AND  
FIRST BANK OF NIGERIA PLC ..... RESPONDENT

---

APPEALS - Issues - Accelerated hearing - The issues being weighty must be settled in good time - As court does not encourage delays in proceedings between parties (H1)

***FACTS***

Applicant brought this interlocutory application before the Supreme Court of Nigeria, seeking inter alia for an order directing respondent to pay the sum of N2,340,772,726.00 being the amount due to applicant as at September 22nd 2014 pursuant to an arbitral award, into an interest-yielding account in a reputable bank, which account shall be under the sole control of the Chief Registrar of the court pending the determination of the applicant's appeal. Respondent filed a counter-affidavit in opposition to applicant's application. Applicant is a limited liability company. Respondent is banker to the judgment debtor (i.e. Zamfara State Government). Applicant got a contract to supply Zamfara State Government, 12,500.00 metric tons of urea fertilizer at the cost of N1,462,000,000.00. Applicant did the supply but did not receive payment as agreed.

Applicant therefore went into arbitration with the State Government and the government largely conceded to applicant's claims. As a result, the Presiding Arbitrator made several awards to applicant including interests and arbitration costs. Applicant approached the High Court of Zamfara State for enforcement of the arbitral awards and applied for garnishee of Zamfara State Government funds with respondent. The High Court issued a garnishee order nisi against respondent, asking it to show cause why the order nisi should not be made absolute. Respondent filed its garnishee's affidavit of return and a further and better affidavit. Eventually, the High Court made

the garnishee order nisi absolute against respondent. Aggrieved, respondent appealed to the Court of Appeal, Sokoto Division. The court allowed the appeal and set aside the order absolute on the basis that the garnishee (i.e. respondent) has a charge on the debt. Dissatisfied with the stance of the court, applicant appealed to the Supreme Court. The present application was brought within the life of the appeal.

**HELD** (Unanimously granting accelerated hearing of the appeal per **MUHAMMAD JSC**)

*APPEALS - Issues - Accelerated hearing*

**1. These are certainly weighty issues which need to be settled in good time and once and for all. It is not and it should not be the custom of any court of law to encourage delays in any proceeding between parties, especially where the economy of a State, corporation and or nation is at stake.**

***I am of the firm view that granting accelerated hearing of the main appeal will serve the proverbial interest of justice in this case. Accordingly, it is hereby ordered that both parties in this appeal, should, as a matter of urgency, take the right steps to settle their respective briefs of argument and liaise with the court's registry for a possible date for hearing of the pending appeal in good time.*** (p. 326 D)

### **REPRESENTATION**

Chief O. E. B. Effiong, SAN for the appellant/applicant with him; Dr. George Ogunyome  
Masud Alabelewa for respondent/applicant with him; T. O. Ishola; H. Suleman and A. B. Abdulwahab

### **CASE REFERRED TO**

Dumin Pharmaceutical & Chemical Co. Ltd. v. Beneke Pharmaceutical & Cosmetics Ltd. (2008) 4 NWLR (pt. 1077) 376

### **LEAD JUDGMENT BY MUHAMMAD JSC**

Facts contained in the affidavit evidence of the parties to this

interlocutory appeal reveal that the applicant is a limited liability company carrying on business as importers, exporters and general merchants, with particular interest in the sale of fertilizer. The respondent is banker to the judgment debtor. In June, 2008, the applicant was awarded a contract to supply Zamfara State Government, 12,500.00 metric tons of urea fertilizer at the cost of N1,462,000.00 (One Billion, Four Hundred and Sixty Two Million Naira). The applicant duly supplied the fertilizer but did not receive payment as agreed. Applicant went into arbitration with Zamfara State Government and they largely conceded to applicant's claims. As a result, the Presiding Arbitrator made several awards to the applicant including interests and arbitration costs.

The applicant approached the High Court of Zamfara State for enforcement of the arbitral awards and applied for garnishee of Zamfara State Government funds with the respondent. The said High Court issued a garnishee Order NISI against the respondent, asking it to show cause why the Order NISI should not be made ABSOLUTE.

The respondent filed its Garnishee's affidavit of return and a further and better affidavit. After all entreaties, the High Court made the garnishee order NISI, ABSOLUTE against the respondent. Aggrieved with the High Court's decision, the respondent appealed to the Court of Appeal. The Sokoto Division of the Court of Appeal allowed the appeal and set aside the Order ABSOLUTE on the basis that the garnishee (i.e. respondent) has a charge on the debt. The appellant/applicant was aggrieved with the lower court's decision and it appealed to this court.

It is within the pendency of the appeal that the appellant filed this motion which sets out the following reliefs:

1. *"AN ORDER directing the respondent to pay the sum of N2,340, 772, 726.00 (Two Billion, Three Hundred and Forty Million, Seven Hundred and Seventy Two Thousand, Seven Hundred and Twenty Six Naira) being the amount due to the appellant as at September 22nd 2014 pursuant to an arbitral award, into an interest-yielding account in a reputable bank, which account shall be under the sole control of the Chief Registrar of this Honourable Court pending the determination of the appellant/applicant's appeal.*

2. *AN ORDER directing the respondent to pay into the above-mentioned account, whatever sum is calculated by the Chief Regis-*

trar to have accrued on the judgment-sum of N1,789,638,858.00 (One Billion, Seven Hundred and Eighty Nine Million, Six Hundred and Thirty Eight Thousand, Eight Hundred and Fifty Eight Naira), at the rate of 10% per annum (as ordered by the arbitral tribunal) from the above-mentioned dated of September 22, 2014 till the date this

B Honourable Court delivers its ruling on this application.

3. AN ORDER directing the Chief Registrar to forthwith place the sums of money referred to above on fixed deposit at the best rate available at any of the reputable banks in Nigeria and to open a separate account to facilitate the placement on fixed deposit, if necessary.

C OR IN THE ALTERNATIVE TO THE ABOVE

4. AN ORDER granting accelerated hearing for this appeal, so that same can be determined expeditiously and if judgment is given D for the appellant, it can take urgent steps to liquidate its outstanding indebtedness to the respondent (which resulted from separate loan transactions) and reverse the negative credit rating that the Central Bank of Nigeria has placed on it due to the said debt.

AND

E 5. FOR SUCH OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.”

The Motion was supported by 8 grounds and a 69 paragraph-affidavit sworn to by one Malik Alfa Ahmadu, Esq. and some exhibits. The applicant filed a written address as well, supporting the motion.

F The learned counsel for the respondent filed a counter-affidavit on 8/12/14. He also filed on same date a written address in opposition of the Motion on Notice.

G This court heard the motion on the 3rd day of November, 2015. We held our conference on the application on Wednesday 11th of November, 2015. We considered all the depositions in the affidavit in support and the counter affidavit and we unanimously came to the conclusion that although the appeal was filed to this court in 2013, it involves heavy financial disputes affecting not only H First Bank of Nigeria, Plc as a commercial bank and another company, but also a State Government. My attention has been caught by some of the averments made by the parties. The applicant, in paragraphs 67 and 68 of affidavit in support deposed as follows:

*“67. That in the event that this Honourable Court is not inclined to order payment into an interest-yielding account, it would be just, as an alternative, for accelerated hearing to be granted.*

*68. That if this appeal can be determined in good time, the appellant can seek to pay back its debt to the respondent, thereby avoiding bankruptcy and hopefully reversing the above-mentioned negative credit rating that is inter alia, affecting its ability to raise capital from other banks.”*

The respondent, in its counter affidavit averred as follows:

*“14. That contrary to the averments (sic) contained in paragraphs 43, 44 and 46 of the affidavit in support of the application, there is no GARNISHED MONEY in favour of the applicant with the respondent as at date*

*15. That contrary to the averments contained in paragraph 45 of the affidavit in support of this application; the applicant is actually indebted to the respondent for credit facilities granted to it at its request. The outstanding debit balance of the facility together with accruing interest thereon at the rate of 21.5 stood at the sum of Two Billion Six Hundred and Seventy Million, Two Hundred and Twenty Seven Thousand, Eighty Eight Naira, Sixty Two Kobo (N2, 670,227, 088. 62)*

*16. That as at the 19th day of September 2014, the outstanding debit balance in its account stood at the sum of Two Billion, Six Hundred and Ninety Six Million, Six Hundred and Eleven Thousand, Six Hundred and Fifty Three Naira, Eighty Nine Kobo (N2,696,611,653.89). A copy of letter of demand dated 19/12/2014 was shown to me and attached herewith marked as “Exhibit 3”.*

*17. That contrary to the averments contained in paragraph 53 of the affidavit in support of this application, there is no judgment sum in favour of the applicant being utilized by the respondent for lending and other banking business.*

*18. That contrary to the averments contained in paragraphs 54, 55, 56, 57 and 58 of the affidavit in support of this application, the funds then standing in the account of Zamfara State Government has been utilized to set off part of its indebtedness to the respondent pursuant to the clear covenants contained in the agreements between the parties.*

*19. That by virtue of its banking license, the respondent is*

*entitled to charge interest on loans it granted to its customers including the applicant and it is bound by law and regulations to submit its books to the Central Bank of Nigeria for examination.*

B 20. *That contrary to the averments contained in paragraph 59 of the affidavit in support of this application, the respondent did not in any way connive with Zamfara State Government in the operation of its accounts.*

C 21. *That I know as a fact that as at date, Zamfara State Government is still indebted to the respondent for credit facilities, hence there is no funds belonging to Zamfara State Government in custody of the respondent copies of accepted letters of offer of credit facility dated the 12th day of September, 2014 and 23rd day of September 2014 were shown to me and attached herewith marked as "Exhibits 4 and 4A respectively.*

D 22. *That interest of justice will be better served by the refusal of this application as its grant will be highly prejudicial and work great hardship to the respondent."*

E ***These are certainly weighty issues which need to be settled in good time and once and for all. It is not and it should not be the custom of any court of law to encourage delays in any proceeding between parties, especially where the economy of a State, corporation and or nation is at stake.***

F ***I am of the firm view that granting accelerated hearing of the main appeal will serve the proverbial interest of justice in this case. Accordingly, it is hereby ordered that both parties in this appeal, should, as a matter of urgency, take the right steps to settle their respective briefs of argument and liaise with the court's registry for a possible date for hearing of the pending appeal in good time.*** See: *Dumin Pharmaceutical & Chemical Co. Ltd. v. Beneke Pharmaceutical & Cosmetics Ltd. & 2 Ors (2008) 4 NWLR (Pt. 1077) 376 at 407 - 408 - D-A.*

I make no order as to costs.

H

### **MUNTAKA-COOMASSIE JSC**

I have read before now the lead judgment rendered by learned brother Tanko Muhammad JSC, I agree with his reason and reasoning leading to his conclusion. I make no order as to costs.

**RHODES-VIVOUR JSC**

I read in draft the leading Ruling delivered by my learned brother, I.T. Muhammad, JSC I agree with his lordship that the arbitral award should remain with the Respondent, while accelerated hearing of the appeal is granted. The sum of N2,340,772,726 (Two Billion three hundred and forty Million, seven hundred and seventy two thousand seven hundred and twenty six Naira) is the amount due to the Appellant as at 22/9/2014, pursuant to an arbitral award. B

An appeal is pending. While the appeal remains unheard, the Appellant wants the said sums paid into an interest yielding account pending the determination of the appeal OR that accelerated hearing of the appeal be granted. C

The arbitral award of over two billion naira has been in the vaults of the Respondent Bank since 22/9/14. The Appellant/Applicant does not mind if the said sum remains with the Respondent, provided the hearing of the appeal is accelerated. D

I agree with the Appellant. It would not be equitable when rights of the parties are still not finally resolved to remove such a huge sum from the vaults of the Respondent. Such an act may drastically affect the Respondent business. The better course would be to grant accelerated hearing of the appeal so that the rights of the parties are finally decided, and the correctness of the arbitral award properly examined and pronounced upon. E

For this, and the detailed reasoning in the leading ruling, I grant accelerated hearing of the appeal. I agree with the further orders in the leading Ruling. F

---

**OGUNBIYI JSC**

My learned brother Hon. Justice Tanko Muhammad, JSC had dealt exhaustively with the application in question. I agree without more that the interest and justice of this application will best be served if an order is made in favour of the alternative to reliefs 1, 2 and 3. In other words, I completely subscribe to the expeditious determination of this appeal and which should be given an accelerated hearing of same. G H

The application is hereby granted in terms of the alternative

relief and I also adopt the reason and conclusion arrived at in the lead Ruling.

An order of accelerated hearing of the appeal is endorsed by me as a matter of urgency and I further adopt all orders made therein the ruling and inclusive of costs.

B

---

***NWEZE JSC***

My noble Lord, Ibrahim Tanko Muhammad, JSC, obliged me with the draft of the leading Ruling just delivered now, I agree with the reasoning and conclusion.

Like the leading Ruling, I agree that granting accelerated hearing of the main appeal would serve the interest of justice in this case. I abide by all the consequential orders of my Lord, Ibrahim Tanko Muhammad, JSC.

E

F

G

H