

therefore agree with the concurrent findings of the trial and lower Courts that Appellant's affidavit lacked any positive statement of facts alleging non-service of the garnishee order nisi. Beyond that, the averment quoted above is pure legal argument, which is an extraneous content in an affidavit. Such an averment is liable to be discountenanced because it offends the provision of Section 115 of the Evidence Act, 2023 as amended which prohibits argument in an affidavit. See *BAMAIYI v. STATE & ORS* (2001) LPELR-731(SC) Pp. 26-27, Paras. D-C. Similarly, the averment in the Appellant counsel's written address that: "it was not aware of the pendency of the garnishee proceedings but only got to know of it through one of the garnishee banks because the Appellant was not served with the order nisi" cannot serve the purpose of deposition in an affidavit in support of a motion seeking a relief from the Court. It is trite law that no matter how brilliant the submission of a counsel may be, it cannot be a substitute for evidence. This principle underscores the adversarial nature of our legal system where parties are required to prove their assertions through credible and admissible evidence, rather than relying solely on the persuasive rhetoric of their counsel. The role of a counsel's address is to highlight, analyze, and persuade the Court based on the evidence already presented, not to introduce new facts or fill gaps in the evidence. The Court's decision must be predicated on facts established through evidence, not on the eloquence or ingenuity of legal arguments. See *NIGER CONSTRUCTION LTD V. OKUGBENI* (1987) LPELR-1993 (SC) P. 7, Paras. B-C), *BABA & ANOR v. INEC & ORS* (2024) LPELR-62230(SC), *MOHAMMED v. STATE* (2024) LPELR-

62544 (SC). Therefore the contention that the Appellant disclosed the fact of non- service of the order nisi on it in its affidavit before the trial Court has no support in the entire record of this appeal. I am also not persuaded by the Appellant counsel's contention that service of the order nisi on the Appellant is a condition precedent to the exercise of jurisdiction by the trial Court. Therefore, the trial Judge ought to have looked out for proof of service in the case file before continuing the garnishee proceedings. This contention is unavailing for two reasons. First, because where a party who is entitled to be served a Court process appears in Court, there is a rebuttable presumption that the appearance is in response to service of the process; it then behoves the party appearing to rebut that presumption. In the instant appeal, the Appellant did not depose to facts in its affidavit to raise the issue of non-service of the order nisi in rebuttal of that presumption. Secondly, the essence of service of a process on a party is to notify the party of the pendency of proceedings concerning the process served. However where the party to be served has become aware of the pendency of proceedings and has even filed processes in reaction thereto, the need for the Court to look out for proof of service on such a party becomes superfluous. To insist on formal proof of service in such circumstances would be to elevate technicality over substantial justice. See OKESUJI V. LAWAL ((1991) LPELR-2447 (SC) P. 27, PARAS. B-F), VAB PETROLEUM INC V. MOMAH (2013) LPELR- 19770 (SC) PP. 24-25. The proceedings leading to the instant appeal is a garnishee proceedings, which is strictly between the judgment debtor and the garnishee. The requirement of service

of order nisi on the Appellant as a judgment debtor is only for the purpose of notice or information and the Appellant having become aware of the pendency of the garnishee proceedings and having filed application to set aside the order nisi and a counter-affidavit in opposition to the garnishee proceedings, I cannot figure out how the failure to serve the order nisi prejudiced the Appellant as to make that a bone of contention in this appeal. The hue and cry in this appeal about the failure to serve the order nisi on the Appellant, in my considered view, is only a storm in a tea cup."

Per **ABUBAKAR SADIQ UMAR ,JSC** (Pp. 20-25, paras. E-B)

READ IN CONTEXT

VIEW ANALYTICS

APPEAL - GROUND(S) OF APPEAL - Effect of a complaint on appeal which does not flow from/relate to any ground of appeal

"It is trite that the jurisdiction of an appellate Court to consider an issue on appeal is invoked by grounds contained in the Notice of Appeal. Consequently, where there is no ground raising a complaint before the appellate Court, the appellant cannot be heard in respect of such a complaint not raised in the ground of appeal as the appellate Court will lack jurisdiction to consider such complaint. And where the appellant distills an issue in his brief not supported by any ground in the Notice of Appeal, such an issue will be incompetent and liable to be struck. Similarly, where an appellant digresses or lumps submission on a complaint raised in the grounds of appeal together

with submission on a complaint not so raised, the appellate Court is obligated to discountenance the part of submission not raised in the ground of appeal. See OLUMOLU VS. ISLAMIC TRUST OF NIGERIA (1996) LPELR 2626 SC, NWOSU V. UDEAJA (1990) 1 NWLR (PT. 125) 188; ONYIDO V. AJEMBA (1991) 4 NWLR (PT. 184) 203, OSINUPEBI V. SAIBU (1982) 7 S.C. 104."

Per **ABUBAKAR SADIQ UMAR, JSC** (Pp. 25-26, paras. E-D)

[READ IN CONTEXT](#)

[VIEW ANALYTICS](#)

PRACTICE AND PROCEDURE - GARNISHEE PROCEEDINGS - The procedure in garnishee proceedings

"The Appellant's counsel appears unwilling and unable to follow the position of the law in garnishee proceedings. After a garnishee order nisi is granted, usually ex parte on application of the judgment creditor, the order nisi is supposed to be served on the judgment debtor and the garnishee. They are required to show cause why the order nisi should not be made absolute on the return date. All the processes filed by the judgment creditor/garnishor, which the Court considered in granting the ex parte order nisi, **MUST** be served on the garnishee and judgment debtor. The judgment debtor and the garnishee are mandated by law to file counter affidavit showing cause why the order nisi should not be made absolute. On the return date, they are obliged to bring to the attention of the Court these counter affidavit and exhibits attached thereto which

detail reasons why the liquidated sum sought to be attached by the judgment creditor should not be so attached from the sum standing to the credit of the judgment debtor in the Bank (garnishee). No other procedure is allowed by law. No motions to set aside the order nisi is allowed by law. In this case, the Appellant as judgment debtor did not depose to any fact in its affidavit to support its contention that it was not served the order nisi and its accompanying Court documents, as required by law. That would have been legally acceptable and the only credible basis of its opposition to the garnishee proceedings. The judgment debtor is served in garnishee proceedings so that it would have an opportunity to bring the latest position of the case or debt to the attention of the Court before an order absolute is granted. A garnishee order absolute is always for a specific liquidated sum of money. For instance, the judgment debtor may need to bring to the attention of the Court that there is a pending appeal in which it had sought and obtained stay of execution of the judgment. The judgment debtor may need to bring to the attention of the Court that terms of settlement on how to liquidate the judgment debt had been agreed or that it had liquidated part of the judgment debt so that the sum ordered by the trial Court in its judgment is no longer the debt due to be paid. These are some examples of what the Court expects the counter affidavit of the judgment debtor to contain whenever it files an affidavit to show cause. In the same vein, the counter affidavit of the garnishee (Bank) cannot be one to join issues with the judgment creditor in respect of a judgment to which he was not a party. The only information in the counter affidavit required by the Court is that the