

Bank cannot satisfy the judgment debt because the balance in the account of the judgment debtor in its books is less than the amount claimed by the judgment creditor. It may then undertake to release what it has. The garnishee may also swear that the judgment debtor has no account with it and cannot give up what it does not have. The garnishee (Bank) cannot challenge the order nisi or the judgment leading to it. As I stated earlier, the judgment debtor/Appellant cannot, through its opportunity to show cause, seek within that forum an attempt to re-contest the claim at trial or to argue an appeal against the judgment before a Court of coordinate jurisdiction."

Per **HELEN MORONKEJI OGUNWUMIJU ,JSC** (Pp. 28-31, paras. E-C)

[READ IN CONTEXT](#)

[VIEW ANALYTICS](#)

APPEAL - INTERFERENCE WITH FINDING(S) OF FACT(S) - When the Supreme Court will not interfere with the findings of fact of the Court of Appeal

"The Appellant starved this Court of the necessary concrete evidence of perversity against the lower Court's decision, a *conditio sine quo non*, that will compel this Court to disturb its immaculate decision that is in total alignment with the law of garnishee proceeding. The law, in its infinite wisdom, does not grant this Court an unbridled licence to tinker with a decision that has not disclosed any enmity with the letters and spirit of the law. Hence, I endorse the lower Court's decision hook, line and sinker."

Per **OBANDE FESTUS OGBUINYA ,JSC** (P. 32, paras. D-F)

READ IN CONTEXT

VIEW ANALYTICS

iv

VITACHEM (NIG) LTD V. DSM SINOCHEN PHARMACEUTICALS INDIA PRIVATE



ABUBAKAR SADIQ UMAR, J.S.C. (Delivering the Lead Judgment): This is an appeal against the judgment of the Court of Appeal, Lagos Judicial Division delivered on the 27th October, 2017, which dismissed the Appellant's appeal and affirmed the judgment of the High Court of Lagos State given on the 16th April, 2014 in Suit No: ID/ADR/126/2014.

BRIEF STATEMENT OF FACTS

The Respondent got a summary judgment against the Appellant on the 24th November, 2014 from the High Court of Lagos State in Suit No: ID/ADR/126/2014. On the 1st

December, 2014, the Respondent filed an ex-parte application for garnishee order nisi before the trial Court while the Appellant also filed an application to set aside the summary judgment on the 5th December, 2014. On the 10th of December, 2014, the Respondent filed a counter-affidavit to the Appellant's application to set aside the summary judgment. The trial Court heard and granted the application for garnishee order nisi on the same day and the matter was adjourned for continuation of garnishee proceedings, particularly the proceedings for hearing of the application to show cause before the garnishee order nisi could be made

absolute. The Appellant filed another application to set aside the garnishee order nisi on the 23rd December, 2014 to which the Respondent also filed a counter-affidavit. The Appellant also filed a counter-affidavit to the Respondent's Motion on Notice for garnishees to show cause. In the affidavit in support of the application to set aside the order nisi, the Appellant stated thus **"that the attempt to make the order absolute is a violation of the Sheriff and Civil Process Act which renders the whole process void."**

Also, Appellant's counsel stated in his written address in support of its counter-affidavit in opposition to the Respondent's motion on notice for garnishees to show cause thus **"It was not aware of the pendency of the garnishee proceedings but only got to know through one of the garnishee banks because the Appellant was**

not served with the order nisi."

The trial Court, in its bench ruling delivered on the 16th April, 2015, after dismissing the Appellant's applications to set aside the summary judgment, as well as the Appellant's application to set aside the order nisi, proceeded to make the garnishee order nisi absolute. In dismissing the Appellant's



applications to set aside the summary judgment and overruling the Appellant's opposition to the garnishee proceedings, the trial Court held that the Appellant did not depose to any fact in its affidavit to support its contention that it was not served the