

Civil Process Act , was the Court of Appeal right when it upheld the position of the learned trial Judge that the Appellant did not disclose the facts of non-service of the Garnishee Order Nisi in its affidavit in support of the application to set aside the Garnishee Order Nisi even when there was no proof of service in the Court file?

2. Whether the Court of Appeal was right to overlook the failure and/or refusal of the learned trial judge to consider the ground of abuse of Court process (among other grounds) upon which the Appellant's application to set aside the Garnishee Order Nisi at the trial Court was predicated?

3. Whether the trial Court had jurisdiction in the first to entertain the Garnishee proceeding. OR Whether the Court of Appeal was right to uphold the jurisdiction of trial Court to entertain the Garnishee proceeding?

On issue No. 1, learned counsel for the Appellant contended that the lower Court was wrong to have affirmed the position of the trial Judge that the Appellant did not disclose the facts of non-service of the garnishee order nisi in its affidavit in support of the

application to set aside the order. He contended that the lower Court acted in error when it said that there was no positive statement of facts in the affidavit to show that the Appellant was not served the order and the averments contained in the affidavit which states 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."

cannot seriously be said to be a statement of facts.

Counsel contended that the fact that there was no direct statement of fact in the Appellant's affidavit is immaterial, especially when the trial Court has the case file before it from which it could have easily confirmed the non-service of the order nisi on the Appellant by looking out for the proof of service. He argued that in the light of the Appellant's deposition in paragraph 28 of its counter- affidavit which states:

"that the attempt to make the order absolute is a violation of the Sheriff and Civil Process Act which renders the whole process void."

and paragraph 19 of the Appellant's written submission in support of the counter- affidavit to the garnishee proceedings,

wherein the Appellant made it abundantly clear 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**, it amounts to mere academic exercise for the Court of Appeal and the trial Court to insist that there must be a positive statement of fact in the Appellant's counter-affidavit that the Appellant was not served the garnishee order nisi. Reliance is placed on NWABUEZE VS. OKOYE (1998) 10-11 SCNJ PAGE 685 paras A-D, RAMAWA VS. NACB CONSULTANCY & FINACE COMPANY LTD (2007) ALL GENERALE BANK (NIG) LTD VS.

ADEWUMI (2003) FWLR (PT. 158) p. 1182,
SIGBENU VS. IMAFIDON (2008) LPELR 4510.

On issue No.2, it is Appellant's counsel's contention that the lower Court erred when it refused to pronounce on its complaint that the trial Court overlooked the ground of abuse of Court process raised against the Respondent. He contended that the Respondent committed an abuse of Court process when it moved its application for order nisi on the 10th of December, 2014 while it was fully aware that the Appellant's application to set aside the summary

judgment of the trial Court was pending and had been adjourned to the 14th of January