

2015. He canvassed the argument that that particular step taken by the Respondent is vexatious and oppressive; it overreached the Appellant and was tantamount to an abuse of Court process. He submitted that the lower Court on its part also acted in error by overlooking the refusal of the trial Court to uphold the Appellant's complaint of abuse of process leveled against the Respondent. He referred to JOKOLO VS. GOVERNOR OF KEBBI STATE (2009) 11 NWLR (PT. 1152) PAGE 394, DINGYADI VS INEC (NO.2) (2011) 18 NWLR (PT. 1224) PG. 154, ETTE VS. EDOHO (2009) 8 NWLR (PT. 114) PAGE 601.

Pertaining to issue No.3, counsel submitted that service of an order nisi on the judgment debtor as required under Section 83(2) of the Sheriff and Civil Process Act is a condition precedent to the exercise of the jurisdiction of the Court to proceedings to show cause before the order could be made

absolute. He submitted that failure to serve the order nisi on the Appellant as required by law means that a condition precedent for the exercise of jurisdiction of the Court has not been fulfilled. Hence,

the Court is robbed of the jurisdiction to make the garnishee order nisi absolute. He contended that the lower Court therefore erred in affirming the trial Court's decision. He relied on MOHAMMED VS. BABALOLA (2012) 5 NWLR (PT. 1293) 395, MADUKOLU VS. NKEMDILIM (1962) 1 ALL NLR 587, PLATEAU STATE VS. ATTORNEY GENERAL OF FEDERATION (2006) 1 SC (PT.1) page 1 @ 71, ADEGOKE MOTORS LTD VS. ADESANYA (1989) 3 NWLR (PT. 109) 250 @ 270 paras E-

F, DIN VS. A.G. FEDERATION (1988) 4 NWLR (PT.87) 147, ANISMINIC LTD VS. THE FOREIGN COMPENSATION COMMISSION & ANOR (1969) 1 ALL ER PAGE 208 @ 233.

Counsel urged this Court to resolve all the issues above in favour of the Appellant, allow the appeal and set aside the judgment of the lower Court.

RESPONDENT'S ISSUES AND ARGUMENT

The Respondent, in its brief filed on the 5th September, 2022, settled by STEVE AUSTIN NWABUEZE ESQ, the following issues were distilled for the determination of this appeal:

1. Whether the Court of Appeal was right when it affirmed the decision of the trial Court to the effect that the affidavit of the Appellant's Motion on Notice dated 23/12/2014 did not disclose any statement of fact that



the Appellant was not served with the garnishee order?

2. Whether given the entire circumstances of this appeal, this Honourable Court ought to interfere with the concurrent findings of facts of the two lower Courts?

Arguing issue No 1, learned counsel for the Respondent submitted that the Courts have held that decisions to grant a relief sought by a party in a motion must be guided by the affidavit evidence before the Court. Counsel submitted that it is the duty of the Applicant to supply the facts that will convince the Court to grant the reliefs. He cited the decisions of the Court in **OJAGBAMILA VS LEJUWA (2005) 3 NWLR**

(PT.911) 105 @ 119, EZECHUKWU VS. ONWUKA (2006) 2 NWLR (PT.963) 160 among others.

Counsel submitted that though the primary means of proving service of process on a party is by affidavit of service or evidence of the bailiff, that is not the only way service of process can be proved. He submitted that personal appearance is the best prove of service; and where there is no affidavit of service before the Court but the person to be served appears in Court, then there will be no need for the Court to insist on affidavit evidence

in proof of service. He relied on S.G.B.N. LTD