

VS ADEWUMI (2003) 10 NWLR (PT. 829) 526,
OKESUJI VS LAWAL (1991) NWLR (PT. 170)
66.

He contended that in the instant appeal, the Appellant did not raise the issue of non-service of the order nisi, either in its application to set aside the garnishee order nisi or in its counter-affidavit against the garnishee proceedings. The Appellant raised the issue for the first time while arguing its application dated 23rd December 2014 during the proceeding of the 2nd March, 2015. He contended that the trial Court was right in discountenancing the Appellant's complaint of non-service of the order nisi because the Appellant filed processes in response to the order nisi, thereby making the Appellant's complaint of non-service an after-thought.

He further submitted that the Appellant's

complaint of denial of fair-hearing against the trial Court was unfounded as the Appellant's counsel was present in Court and was given adequate opportunity to present their case. Counsel went further to argue that the Appellant did not depose to facts in its affidavit to disclose non-service and the deposition in its affidavit that **"That**

the attempt to make the order absolute is in violation of the Sheriff and Civil Process Act which renders the whole process void" does not in any way indicate that the Appellant was not served and the Court cannot be persuaded to draw inferences of non-service from such averments as Courts do not act on speculations. Therefore, both the trial

and the lower Courts were right in holding that the Appellant did not place any material before the Court to indicate that it was never served the garnishee order nisi. Counsel urged the Court to so hold and resolve the issue against the Appellant.

On issue No.2, it is counsel's submission that the Supreme Court will not ordinarily disturb concurrent findings of the lower Courts unless they are shown to be perverse. It is his contention that the Appellant has an uphill task of showing special circumstances that will warrant the interference of this Court. Reliance is placed on ADEYE & ORS VS. ADESANYA & ORS (2001) LPELR 166 SC, ZIIDEEH VS. RIVERS STATE CIVIL SERVICE COMMISSION (2007) LPELR 3544 SC. It is contended that the Appellant in the instant appeal has neither demonstrated the perverseness in the

judgment of the Court below occasioning miscarriage of justice to the Appellant nor shown the existence of exceptional circumstances that will warrant the interference of this Court with the concurrent decisions of the two Courts below. This Court is urged to affirm the decision of the Court below and dismiss the appeal.

RESOLUTION OF THE APPEAL

I have considered the Record of Appeal and the Briefs of the parties, which I summarized above. I will adopt the issues distilled by the Appellant in resolving this appeal. However, I must quickly point out that the argument canvassed by the

Appellant under issue No 1 is the same as the argument canvassed under issue No.3. The point canvassed under the two issues borders on the contention of the Appellant that it was not served the order nisi and that non-service of the order nisi goes to the root of the entire garnishee proceedings. I will therefore treat the two issues (issues 1 and 3) as one. I will distill a comprehensive issue that will accommodate the Appellant's submission under the said issues 1 and 3. I will then consider the Appellant's issue 2 separately. In the sequel, this appeal will be



determined with the following issues;

1. Whether having regards to the processes before the Court and the entire