

circumstances of the case, the lower Court was right in affirming the trial Court's dismissal of the Appellant's motion on notice dated the 23rd December, 2014 and the Appellant's opposition to the entire garnishee proceedings at the trial Court?

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?

RESOLUTION OF ISSUE NO. 1

1. Whether having regards to the processes before the Court and the entire circumstances of the case, the lower Court was right in affirming the trial Court's dismissal of the Appellant's motion on notice dated the 23rd December, 2014 and the Appellant's opposition to the entire

garnishee proceedings at the trial Court?

It is an elementary principle of law that a party who seeks the intervention of the Court to grant a relief must adduce credible and cogent evidence

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to support his prayer. This principle is deeply entrenched in our jurisprudence and finds its basis in both statutory provisions, particularly the Evidence Act, and a plethora of judicial pronouncements. To this end **Section 131(1) of the Evidence Act, 2023 (AS AMENDED BY THE EVIDENCE (AMENDMENT) ACT, 2023)** provides:

"Whoever desires any Court to give judgment as to any legal right or liability

dependent on the existence of facts which he asserts shall prove that those facts exist."

Similarly, Section 136(1) of the Evidence Act, specifies the burden of proof as to a particular fact:

"The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other."

In other words, the burden of proof rests on the party who asserts a fact and wishes the Court to act upon it. If a party makes a claim or seeks a relief, he must prove the underlying facts that entitle him to that claim or relief, failing which the Court is entitled to



dismiss such a claim or refuse such a prayer as the Court cannot grant reliefs without proof. With specific reference to a claim, relief or prayer based on affidavit, the affidavit in support must contain cogent and credible averments and where necessary relevant documentary evidence to convince the Court. The Court cannot speculate or assume facts; they must be proven through evidence. It is the quality and weight of the affidavit evidence that determines the merit of the relief. See **BAKARE V. ACB LTD (1986) LPELR-708(SC) P. 22, PARAS. E-F**, **OKALA V. UDAH (2019) LPELR-55269(SC) PP. 29-30, PARAS. F-B**, **OGBEBOR V. IHASEE (2024) LPELR- 62380(SC) .**

It is important to first point out that this

appeal is not against the dismissal of the Appellant's application to set aside the summary judgment against it; rather, the instant appeal is against the garnishee proceedings conducted by the trial Court. The major grouse of the Appellant against the garnishee proceedings is that after the grant of the garnishee order nisi the order was not served on it as the judgment debtor, which service is a condition precedent to the proceedings for garnishee to show cause, pursuant

to Section 83(2) of the Sheriff and Civil Process Act. It is pertinent to note that the Appellant filed an application dated the 23rd December, 2014 to set aside the said order