

nisi but did not raise the issue of non-service of the said order nisi on it.

In the affidavit filed in support of the application to set aside the garnishee order nisi, the Appellant merely stated thus: **"That the attempt to make the order absolute is in violation of the Sheriff and Civil Process Act which renders the whole process void"** . The Appellant has argued vehemently that by the foregoing averment in its affidavit, it has raised the issue of non- service of the order nisi. But I am of the firm view that the averment quoted above is at large; it neither conveys the meaning that the Appellant was not served the order nisi, as required by the Sheriff and Civil Process Act nor gives impression of infraction of any specific provision of the Sheriff and Civil Process Act. I therefore agree with the concurrent findings of the trial and lower Courts that Appellant's affidavit lacked any positive statement of facts alleging non-service of

the garnishee order nisi.

Beyond that, the averment



quoted above is pure legal argument, which is an extraneous content in an affidavit. Such an averment is liable to be discountenanced because it offends the provision of Section 115 of the Evidence Act, 2023 as amended which prohibits argument in an affidavit. See BAMAIYI v. STATE & ORS (2001) LPELR-731(SC) Pp. 26-27, Paras. D-C

Similarly, the averment in the Appellant counsel's written address 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"

cannot serve the purpose of deposition in an affidavit in support of a motion seeking a relief from the Court. It is trite law that no matter how brilliant the submission of a counsel may be, it cannot be a substitute for evidence. This principle underscores the adversarial nature of our legal system where parties are required to prove their assertions through credible and admissible evidence, rather than relying solely on the persuasive rhetoric of their counsel.

The role of a counsel's address is to highlight, analyze, and persuade the Court based on the evidence

already presented, not to introduce new facts or fill gaps in the evidence. The Court's decision must be predicated on facts established through evidence, not on the eloquence or ingenuity of legal arguments. See NIGER CONSTRUCTION LTD V. OKUGBENI (1987) LPELR-1993 (SC) P. 7, Paras. B-C), BABA & ANOR v. INEC & ORS (2024) LPELR-62230(SC), MOHAMMED v. STATE (2024) LPELR-62544 (SC) .

Therefore the contention that the Appellant disclosed the fact of non- service of the order nisi on it in its affidavit before the trial Court has no support in the entire record of this appeal. I am also not persuaded by the Appellant counsel's contention that service of the order nisi on the Appellant is a condition precedent to the exercise of jurisdiction by the trial Court. Therefore, the trial Judge ought to have looked out for proof of service in the case file before continuing the garnishee proceedings.

This contention is unavailing for two reasons. First, because where a party who is entitled to be served a Court process appears in Court, there is a rebuttable presumption that the appearance is in response to service of the process; it then behoves the party appearing

to rebut that presumption. In the instant appeal, the Appellant did not depose to facts in its affidavit to raise the issue of non-service of the order nisi in rebuttal of that presumption.

Secondly, the essence of service of a process on a party is to notify the party of the pendency of proceedings concerning the process served. However where the party to