

be served has become aware of the pendency of proceedings and has even filed processes in reaction thereto, the need for the Court to look out for proof of service on such a party becomes superfluous. To insist on formal proof of service in such circumstances would be to elevate technicality over substantial justice. See OKESUJI V. LAWAL ((1991) LPELR-2447 (SC) P. 27, PARAS. B-F), VAB PETROLEUM INC V. MOMAH (2013) LPELR- 19770 (SC) PP. 24-25

The proceedings leading to the instant appeal is a garnishee proceedings, which is strictly between the judgment debtor and the garnishee. The requirement of service of order nisi on the Appellant as a judgment debtor is only for the purpose of notice or information and the Appellant having become aware of the pendency of the garnishee proceedings and having filed

application to set aside the order nisi and a counter-affidavit in opposition to the garnishee proceedings, I cannot figure out how the failure to serve the order nisi prejudiced the Appellant as to make that a bone of contention in this appeal. The hue and cry in this appeal about the failure to serve the order nisi on the Appellant, in my considered view, is only a storm in a tea cup . In view of this, Appellant's issues 1 and 3 are hereby resolved against the Appellant.

RESOLUTION OF ISSUE NO. 2

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?

It is trite that the jurisdiction of an appellate Court to consider an issue on appeal is invoked by grounds contained in the Notice of Appeal. Consequently, where there is no ground raising a complaint before the appellate Court, the appellant cannot be heard in respect of such a complaint not raised in the ground of appeal as the appellate Court will lack

jurisdiction to consider such complaint. And where the appellant distills an issue in his brief not supported by any ground in the

Notice of Appeal, such an issue will be incompetent and liable to be struck. Similarly, where an appellant digresses or lumps submission on a complaint raised in the grounds of appeal together with submission on a complaint not so raised, the appellate Court is obligated to discountenance the part of submission not raised in the ground of appeal. See OLUMOLU VS. ISLAMIC TRUST OF NIGERIA (1996) LPELR 2626 SC, NWOSU V. UDEAJA (1990) 1 NWLR (PT. 125) 188; ONYIDO V. AJEMBA (1991) 4 NWLR (PT. 184) 203, OSINUPEBI V. SAIBU (1982) 7 S.C. 104 .

In the instant appeal, contrary to the Appellant's claim, the Appellant did not raise the issue of abuse of process in its ground of appeal before the lower Court. The Appellant filed only one ground of appeal and distilled only one issue. The said ground of appeal, as found at page 397 of the

Record of Appeal, goes thus:

"The learned trial Judge erred in law, when he stated that the Appellant did not state that it was not served the garnishee order nisi"

and the lone issue distilled to argue

the sole ground as found at page 362 is as follows:

"Whether the trial Court was competent and had jurisdiction to hear and grant garnishee order absolute when the judgment debtor was not served with the order nisi in line with Section 83(2) of the Sheriff and Civil Process Act."

From the above ground and issue, the