IN THE SUPREME COURT OF NIGERIA

Suit No: SC22/2001

Petitioner: Union Bank of Nigeria Plc
And
Respondent: Boney Marcus Industries Ltd & Ors

Date Delivered: 2005-07-08

Judge(s): Idris Legbo Kutigi , Aloysius Iyorgyer Katsina-Alu , Akintola Olufemi Ejiwunmi , Dahiru Musdapher , Sunday Akinola

Judgment Delivered

At the High Court of Abia State in the Osisioma Judicial Division, Boney Marcus Industries Limited as plaintiff, commenced an action against Nichimen Co. Nigeria Limited as defendant in suit No HOS/229/96. Judgment was given in favour of the plaintiff on 19 May, 1997.

In due course, the plaintiff filed garnishee proceedings praying that it be paid the judgment debt in the hands of Metcome Nigeria Limited and Union Bank of Nigeria Plc as garnishees. On 17th February, 1998 the High Court gave a ruling. In it,

the High Court ordered as follows:

\"It is hereby ordered, pursuant to section 85 of the Sheriffs and Civil Process Law Cap. 118. Laws of Eastern Nigeria, 1963 applicable in Abia State, that the money belonging to the judgment debtor in possession of the 1st garnishee which money is in the 1st garnishee\'s account with the 2nd garnishee be attached to satisfy the judgment debt, together with the costs of the garnishee proceedings.\"

Although dissatisfied with the ruling, the 2nd garnishee appellant promptly complied with the order embodied therein by sending to the Registrar of the trial High Court on 25th February, 1998 a cheque for amount representing the balance in the 1st garnishee\'s account with it. Thereafter on 27th March, 1998, the 2nd garnishee, Union Bank of Nigeria Plc filed a notice of appeal against the said ruling. It is as to the competence of that notice that the plaintiff/judgment creditor has raised the objection that has given rise to the present proceedings.

At this stage I wish to point out, although obvious, that the 2nd garnishee/appellant (Union Bank of Nigeria Plc.) was not a party to the proceedings in Suit No HOS/229/96 which resulted in the judgment sought to be executed by the garnishee proceedings. It is not the decision in that suit against which the appeal under challenge has been filed. The decision in question as I have shown above, is the decision of 17

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February, 1998 making the garnishee order absolute against the 2
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garnishee/appellant. It should be understood that it is to the garnishee proceedings that the 2
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garnishee/appellant was a
party and in which it had rights and obligations.
As I have already indicated, the judgment creditor, Boney Marcus Industries Ltd, in its reaction to the appeal filed against
the garnishee order absolute, filed a notice of preliminary objection under Order 3 rule 15 (1) of the Court of Appeal Rules
challenging the competence of the appeal for the following reasons:
(i) The ruling made by the court below on the 17
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of February, 1998, was interlocutory.
(ii) An appeal against that ruling ought to have been filed within 14 days.
(iii) The notice of appeal in this case was filed on the 27
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day of March, 1998 and is therefore filed out of time
and without leave of court.(iv) The ruling of the court below made on the 25
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day of May, 1998 to the effect that the notice of appeal is void
and incompetent stands and has not been appealed against by reason of the foregoing, the notice of appeal is
void and the Court of Appeal therefore lacks the jurisdiction to entertain any proceeding based on that.
On 7
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December, 2000 the Court of Appeal by a majority decision upheld the preliminary objection and held that the
garnishee order absolute made by the High Court on 17
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February, 1998 was an interlocutory decision and that the appeal
filed on 27
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March, 1998 by the 2
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garnishee/appellant was out of time and therefore incompetent.
The 2
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garnishee has further appealed to this court. In the appellant\'s brief filed on behalf of the 2
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garnishee, one issue
was set down for the determination of this court. It reads:
\"Whether having regard to the circumstances of the case the final garnishee order contained in the ruling of the court
of first instance (Hon. Justice Mba Uduma, at the Osisioma Judicial Division of the High Court of Abia State) dated
17
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February, 1998 is an interlocutory, or final decision.\"
The plaintiff/judgment creditor filed its respondent\'s brief. It also raised a sole issue for determination by this court. It
reads:
\"Whether the majority decision of the Court of Appeal below to the effect that the decision of the High Court made
on the 17
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day of February, 1998 was interlocutory and that an appeal there from outside fourteen days was
incompetent is justifiable.\"

I am in complete agreement with the parties that the central question in this appeal is whether the ruling of the Abia State
High Court given on 17
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February, 1998 was an interlocutory decision or a final decision.
The contention on behalf of the plaintiff/judgment creditor is that the ruling in the garnishee proceedings was an interlocutory decision. Based on this contention, it was submitted that having been filed more than 14 days without the leave of court having been sought and obtained, the notice of appeal is incompetent.
The issue for determination is simple really. It was needlessly made difficult and complicated by learned counsel for the parties and the court below. The issue is not recondite. There is a plethora of cases decided by this court on this issue.
I do not think it is necessary to review the submission of counsel for the parties except to state that for its part the 2
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garnishee/ appellant has contended that the decision of the High Court on 17
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February, 1998 is a final decision because it
determined the rights of the parties before it. It relied on several cases decided by this court on the point.
This area of law in the Nigerian context need not raise any confusion, ingenuity of counsel notwithstanding. There are cases galore decided by this court on this point to the effect that a decision of a court is final when it determines the rights
of the parties. It seems to me therefore that the real test for determining this question ought therefore to be this:
Does the judgment or order as made, finally dispose of the rights of the parties'
If the judgment or order has determined the rights of the parties, then it is unquestionably a final order: but if it does not, it
is then an interlocutory order. See Bozson v. Altrincham Urban District Council (1903) 1 K.B. 547.
Unarguably the question of what is an interlocutory or final decision before now had engaged the attention of the courts in
this country. However, this court has, in Omonuwa v Oshodin & Anor. (1985) 2 NWLR (Pt.10) 924, (1985) 2 SC 1 given an
authoritative decision on the matter. In that case, this court held that:
\"..... a decision between the parties can only be regarded as final when the determination of the court disposes of the rights of the parties, (and not merely an issue), in the case.\"
In Akinsanya v United Bank for Africa Ltd. (1986) 4 NWLR (Pt.35) 273, (1986) 7 SC (Pt.1) 233, this court decided that:
\" '. What renders an order of a court interlocutory or final with respect to a matter before it is its effect on the rights of the parties to the litigation. In all the cases, the test and dominant consideration has been whether the rights of the parties have been finally determined or not.
See also Western Steel Works Ltd. v. Iron and Steel Workers Union (1986) 3 NWLR (Pt. 30) 617.
This Court has recently in Odutola v. Oderinde (2004) 12 NWLR (Pt. 888) 574 re-stated the position of the law. The court,
per Kutigi, JSC held:
\"An order or decision is final when it finally disposes of the rights of the parties, that is to say the decision or order given by the court is such that the matter would not be further brought back to the court itself, as in this case\"
Perhaps, I should refer to a few English cases which have been adopted in this country. In Salaman v. Warner (1891) 1 QBD 734 at 736 Lopes L. J. in giving a more precise characterisation of final judgment or order said:\"I think a judgment or order would be final within the meaning of the rules, when whichever way it went, it would
finally determine the matter in dispute.\"
In Blakey v. Latham (1889) 43 Ch. D. at p. 25 the court said:
\"I cannot help thinking that no order in an action will be final unless a decision upon the application out of which it arises, but given in favour of the other party to the action would have determined the matter in dispute.\"
In Bozson v. Altrincham District Council (1903) 1 K.B. 547, Lord Alverstone CJ. in concurrence with Earl of Halsbury. L.C. on the point said at pp. 549-550:
\"It seems to me that the real test for determining this question ought to be this: Does the judgment or order as made finally dispose of the rights of the parties' If it does, then, I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order.\"

In the instant case, the plaintiff Boney Marcus Ind. Ltd. obtained judgment against the defendant Nichimen Co.(Nigeria) Ltd. This was on 19th May, 1997. Thereafter the plaintiff filed garnishee proceedings against Metcome (Nig.) Ltd and Union Bank of Nigeria Plc. to realise the judgment debt and costs. On 17th February, 1998, the trial Judge granted the application and accordingly made an order absolute, the terms of which I have earlier on in this judgment reproduced. The 2nd garnishee - Union Bank of Nigeria Plc. filed a notice of appeal on 27th March, 1998 against that ruling. The plaintiff raised a preliminary objection to the competence of that notice on the ground that the appeal was filed out of time.

It was the plaintiff\'s contention that the garnishee order absolute was an interlocutory decision and that being so, an appeal against it should and must be filed within 14 days. The court below ruled that the garnishee order absolute was an interlocutory decision.

The question to be resolved in this appeal is really whether the decision of the trial court was interlocutory or final. I think the resolution of this question would depend on whether the garnishee order as made disposed of the rights of the parties before the court.

The order of the trial court was:

\" '.. that the money belonging to the judgment debtor in possession of the 1st garnishee which money is in the 1st garnishee\'s account with the second garnishee be attached to satisfy the judgment debt, together with the costs of the garnishee proceedings.

The above was the final garnishee order. In other words, it was an order absolute. It was a final decision of the court. A judicial decision is said to be final when it leaves nothing to be judicially determined thereafter in order to render it effective and capable of execution. That is to say that the matter would not be brought back to the court itself for further adjudication. Clearly, by the order of the court above, the trial court had determined the rights of the parties before it. I must state again that the appellant promptly complied with the order of the court.

This court, in Odutola v. Oderinde (2004) 12 NWLR (Pt.888) 574 re-stated the position of the law in this respect. The Court, per Kutigi, JSC held:

\"An order or decision is final when it finally disposes of the rights of the parties, that is to say, the decision or order given by the court is such that the matter would not be further brought back to the court itself, as in this case. See Akinsanya v. United Bank for Africa Ltd. (supra); See also Western Steel Works Ltd. v. Iron and Steel Workers Union (supra); Omonuwa v. Oshodin & Anor.(supra)

In my judgment, based on the authorities I have cited, the order of 17th February, 1998 was a final order. In effect, the notice of appeal filed on behalf of the 2nd garnishee/appellant on 28th February, 1998 was filed within time. In the result I find no merit in the preliminary objection, which is accordingly overruled.

The appeal therefore succeeds and I allow it. The decision of the court below is set aside. The plaintiff/judgment creditor/objector shall pay costs of N10,000.00 in this court and N5,000.00 in the court below to the 2

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garnishee/appellant.
Judgement delivered by
Idris Legbo Kutigi. JSC
I read in advance the judgment just delivered by my learned brother Katsina-Alu, JSC. I agree with him that the garnishee
order absolute made by the High Court on 17
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February, 1998 was a final order. The appeal therefore succeeds and it is
hereby allowed. The decision of the court below is set aside. I endorse the order for costs.Judgement delivered by
Akintola Olufemi Ejiwunmi. JSC
As I have had the opportunity of reading the draft of the judgment just delivered by my learned brother, Katsina-Alu, JSC, I
also allow the appeal for the reasons given in the said judgment. I also make the same orders made with regard to costs.
Judgement delivered by
Dahiru Musdapher. JSC
I have read before now the judgment of my Lord, Katsina-Alu, JSC with which I entirely agree for the same reasons which
I adopt as mine, I too find this appeal meritorious and is allowed by me. The decision of the lower court in upholding the preliminary objection is set aside, in its place, the preliminary objection is dismissed. I abide by the order for costs contained in the aforesaid judgment.
Judgement delivered by
Sunday Akinola Akintan. JSC
The main issue raised in this appeal is whether a garnishee order made absolute by a court is an interlocutory or final order.
Garnishee proceedings are a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor which form part of his property available in execution. It is therefore a specie of execution
of debts for which the ordinary methods of execution are inapplicable. By this process, the court has power to order a third
party to pay direct to the judgment creditor the debt due or accruing due from him to the judgment debtor, or as much of it
as may be sufficient to satisfy the amount of the judgment and the costs of the garnishee proceedings. See Words & Phrases Legally Defined 3rd edition Vol. 2, pages 313- 314.
Applications for garnishee proceedings are made to the court by the judgment creditor and the orders of the court usually
come in two steps. The first is a garnishee order nisi. Nisi is a Norman-French word and it means \"Unless\". It is therefore
an order made, at that stage, that the sum covered by the application be paid into court or to the judgment creditor within a
stated time unless there is some sufficient reason by the party to whom the order is directed, is given why the payment ordered should not be made. If no sufficient reason appears, the garnishee order is then made absolute and that ends the
matter in that the party against whom the order absolute is made is liable to pay the amount specified in the order to the judgment creditor. The court thereafter becomes functus officio as far as that matter is concerned in that the Judge who decided the matter is precluded from again considering the matter even if new evidence or argument are presented to him.
See Choice Investments Ltd. v. Jeromnimon (Midland Bank Ltd., Garnishee) (1981) 1 All ER 225 at 328; and Words & Phrases Legally Defined, Vol. 2, page 301.
During the period between when the order nisi and the order absolute are made, the matter would still be pending before the
court. In other words, the proceedings would still be at the interlocutory stage. But once the order absolute is made,

there
would be nothing left before the court in the matter. The court has, at that stage, completely determined the matter between
the parties as far as the proceedings are concerned. The court would be functus officio. There would then be nothing left to
be determined by the court. The question of the proceedings, at that stage, being interlocutory would therefore not arise.
For the above reasons and the fuller reasons given in the leading judgment written by my learned brother, Katsina-Alu,
JSC, which I had read before now, I agree that the garnishee order made absolute by the trial High Court was a final order
and not interlocutory. I therefore agree with the conclusions made in the leading judgment that the appeal should succeed. I
too allow the appeal and set aside the decision of the court below with costs as assessed in the leading judgment.