

CASE DIGEST

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THE COMPANY

EMMANUEL OBOH & ANOR. v. NIGERIA
FOOTBALL LEAGUE LIMITED & 2 ORS.

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EMMANUEL OBOH & ANOR. v. NIGERIA FOOTBALL LEAGUE LIMITED & 2 ORS.

SUPREME COURT OF NIGERIA

(PETER-ODILI; EKO; GARBA; SAULAWA; ABUBAKAR, JJ.SC)

Emmanuel Oboh & Anor. (Appellants) as Claimants at the High Court of Lagos State (trial court) on 9th July 2013., obtained a judgement in the sum of Two Hundred and Thirty-Two Million, Nine Hundred and Fifteen Thousand, Six Hundred and Forty-Four Naira (232,915,644.00) against Nigeria Football League Limited (1st Respondent) as sole Defendant, at the trial court. The Appellants, as Judgment Creditors, in the exercise of their constitutional rights and powers proceeded by way of garnishee proceedings at the trial court to enforce the judgment dated 9th July 2013. They proceeded against the 2nd and 3rd Respondents, as Garnishees, and the trial Court granted the garnishee order nisi against the garnishees attaching the sum owing in satisfaction of the judgment entered in favour of the judgment creditors. The trial court further ordered that the garnishees shall enter appearances within fourteen (14) days and shall file an affidavit to show cause why the order nisi should not be made absolute. The 2nd Respondent filed its affidavit to show cause and denied being indebted to the Judgment Debtor in the above judgement sum or in any other sum and is neither charged with collecting nor is it the custodian of the 1st Respondent for the collection of all or any revenue accruing to the 1st Respondent. The 3rd Respondent also averred, in its affidavit that the 1st Respondent does not maintain any account with it, and also have no fund belonging to the 1st Respondent.

This prompted the Appellants to file Further Affidavit in reply to the 3rd Respondent wherein it stated that the 3rd Respondent has the funds of the of the 2nd Respondent sufficient to satisfy the judgment debt in whole or in part and has also allowed the 2nd Respondent withdraw same. The Appellants further sought that the garnishee be made absolute on the Respondents.



The trial court heard the application for garnishee order absolute, and in its ruling reviewed and renounced its judgement delivered on 9th July 2013 on the ground that the Federal High Court had declared that the incorporation of the 1st Respondent was illegal, void, and has ceased to exist in the eye of the law and that the order absolute, as requested, cannot be made in the circumstances disclosed above. Aggrieved by the decision of the trial court, the Appellants appealed to the Court of Appeal (lower court), which further affirmed the decision of the trial court.

Further aggrieved by the decision of the lower court, the Appellants appealed to the Supreme Court. One of the issues for determination was: *Whether the Court of Appeal was right when they relied on the judgment in FHC/ABJ/CS/179/2010 to hold that the 2nd and 3rd Respondents are not liable to comply with the order nisi because the 1st Respondent has ceased to exist in the eyes of the law?*

Learned Silk for the Appellants argued that the order in Suit No. FHC/ABJ/CS/179/2010 relied on by the Court of Appeal is a declaratory order which is unenforceable and cannot render the 1st Respondent non-existent as a legal entity. He stated further that the declaratory order of the Federal High Court places further duty on a third party, which is the Corporate Affairs Commission to wind up the 1st Respondent, and there is no evidence that at all times material to the decision appealed, the winding up order had been carried out on duly executed; hence the 1st Respondent is still an existing company, and until a dissolution order is made against the 1st Respondent, it continues to exist. Learned counsel submitted that garnishees are liable to comply with the garnishee order nisi, and prayed the Court to make the garnishee order absolute against the 2nd and 3rd Respondents.

In response, learned counsel for the Respondents argued that the appeal should be dismissed because a company that is void neither existed in law and can neither be sued or sue, let alone have execution levied against it via garnishee proceedings. Counsel further stated that on the basis of the Federal High Court nullification order, the 1st Respondent was not a legal person when the main Suit and the garnishee proceedings were commenced, and that the Order Nisi obtained to attach the debts/funds of a non-existent person, i.e, 1st Respondent was impotent and unenforceable, and that the court below was right when it held that the 1st Respondent was no longer in existence. Counsel urged the Court to dismiss the appeal with cost.

In resolving this issue, the Supreme court held that:

There is a world of difference between the winding-up of a company and the dissolution of a company. A company dies once the court orders the dissolution of the company. Thus, the revocation of the company and order of court winding - up same does not indicate it's death. The appointment of a liquidator is for the purpose of ensuring the smooth burial of the company. In such a state, the company is seriously ill, but not dead. The Supreme Court stated further that a company is certified dead on its dissolution, but where the company as in this case is under winding up proceeding it has not died. It is gravely ill, it can sue and maintain an action in court, but no action or proceeding can be brought against it except with the leave of the court. the declaratory order of the Federal High Court relied upon on the premise that the 1st Respondent had ceased to exist as a juristic person in the eyes of the law, is evidently a misconception of the law, as only a dissolution order will render a company incorporated under the Companies and Allied Matters Act non-existent.

Issue resolved in favour of the Appellants.

P.O. Jimoh-Lasisi SAN with S. A. Mustapha for Appellants
Dero Daniel for 2nd Respondent
Lawal Ijaodola for 3rd Respondent
No appearance for the 1st Respondent

This summary is fully reported at (2023) 1 CLRN

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