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IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – A.D. 2026

**CORAM: DR. ERNEST OWUSU-DAPAA, JA (PRESIDING)
DR. RICHMOND OSEI-HWERE, JA
CHARITY AKOSUA ASEM, JA**

NO. H1/12/2026

29TH JANUARY, 2026

ECOBANK GHANA LIMITED PLAINTIFF/RESPONDENT/APPELLANT

VRS

YURI-M PLASTICS AND ANOTHER DEFENDANT/APPELLANT/RESPONDENT

JUDGMENT

DR. OSEI-HWERE, JA

This appeal is a fallout of the ruling of the High Court (Commercial Division), Accra delivered on the 13th December, 2022. The ruling set aside a garnishee order nisi granted in favour of the Plaintiff/Judgment Creditor/Applicant/Respondent/Appellant (hereinafter referred to as “Appellant”) on the 18th January, 2022.

The appeal focuses on the exercise of the court’s discretionary power, particularly

in garnishee proceedings. Exercise of discretion has been an effective tool deployed by the court in the administration of justice. Societal expectation is that this power must be exercised fairly to promote effective justice, as observed by US Chief Justice John Marshall in the 1824 case of **Osborn V. Bank of the United States, 22 U. S. 738 (1824)** as follows:

"Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge, always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law."

The key question to be answered in this discourse is: whether the court's discretion was exercised fairly and in tandem with sound legal principles.

BACKGROUND FACTS

The factual background leading to the instant appeal is devoid of controversy. It revolves around three distinct judgments delivered by the High Court differently constituted. The judgments in question are as follows:

- a) ECOBANK GHANA LIMITED (FORMERLY THE TRUST BANK) VRS. YURI-M PLASTICS PRODUCTS GHANA LTD AND ALFRED KOFI ASIHENE - SUIT NO. BFS/388/10, (hereinafter referred to as "the 2012 Judgment"). This judgment forms the basis of the garnishee application and the main subject of the instant appeal.
- b) MIKE KAKSON AND 2 OTHERS VRS ECOBANK GHANA LIMITED AND THREE OTHERS - SUIT NO. OCC/17/12 (hereinafter referred to as "the 2015 judgment").
- c) YURI-M PLASTIC PRODUCTS GHANA LIMITED V ECOBANK GHANA LIMITED (FORMERLY THE TRUST BANK) -SUIT NO. OCC/39/15 (hereinafter referred to as "the 2019 judgment").

The 2012 Judgment

The 2012 judgment was a debt recovery action successfully instituted in 2010 by the Appellant herein against the Respondents herein resulting in a judgment delivered on 16th February, 2012 by His Lordship George Ato Mills-Graves of High Court (Commercial Court 4), Accra for the recovery of Two Million, Nine Hundred and Fifty-Five Thousand, Four Hundred and Eighteen Ghana Cedis Fifty-One Pesewas (GH¢2,955,418.51), interest thereon and cost against the 1st and 2nd Respondents. An Amended Entry of Judgment was subsequently filed leading to enforcement proceedings by way of a garnishee order nisi dated 20th January 2022 for a total sum of Twelve Million, Twenty-Five Thousand, One Hundred and Thirty-Three Ghana Cedis, Eighty-Seven Pesewas (GH¢12,025,133.87).

The 2015 Judgment

Subsequent to the 2012 Judgment delivered in favour of the Appellant, the shareholders of the 1st Respondent Company instituted a derivative action against Ecobank Ghana Limited (the Appellant herein) and some directors of the Respondent Company including Alfred Asihene (the 2nd Respondent herein), claiming amongst others, damages for fraud perpetrated against YURI-M PLASTICS PRODUCTS GHANA LTD (the 4th defendant therein but the 1st Respondent herein). The basis of the action was that the loan facility contracted – which was the subject of the 2012 Judgment – was fraudulent, as the 2nd Respondent had no authority to enter into the loan transaction with the Appellant herein. Judgment was thereafter delivered by Her Ladyship Gertrude Torkonoo J.A. (as she then was) sitting as an additional High Court Judge at the Commercial Division of the High Court, Accra (Commercial Court 9), on the 15th of December 2015. The court found that the Appellant in concert with the 2nd Respondent herein had perpetrated fraud on the 1st Respondent Company and its shareholders.

Consequently, the court awarded damages in the sum of Four Million Ghana Cedis (GH¢4,000,000.00) in favour of the 4th Respondent Company therein (1st Respondent company herein) against Ecobank (the Appellant herein) and Alfred Asihene (the 2nd Respondent herein) to be used in paying the debt of YURI-M PLASTICS PRODUCTS GHANA LTD (the 4th Respondent therein but 1st Respondent company herein). It was settled to compensate YURI-M PLASTICS (the 4th Respondent therein but the 1st Respondent company herein) for the fraud perpetrated against it on the blind side of the

remaining shareholders and the company.

The 2019 Judgment

Subsequent to the 2015 Judgment, 1st Respondent herein proceeded to institute the third action against Appellant herein and 2nd Respondent herein. The relief claimed in this third suit was mainly to set aside the 2012 Judgment of His Lordship George Ato Mills-Graves on the basis that it was obtained by fraud.

In the 2019 judgment, the court presided by Her Ladyship Angelina Mensah-Homiah J (as she then was) refused to set aside the 2012 Judgment even though she agreed with the findings of the court in the 2015 Judgment that the loan transaction was fraudulent. The court held that “the Four Million Ghana Cedis (GH¢4,000,000.00) general damages awarded in Suit No. OCC/17/12 (the “2015 judgment”) in favour of YURI-M PLASTIC PRODUCTS GHANA LIMITED (the Plaintiff therein), was to be used to pay its obligations under the fraudulent loan transaction masterminded by the 2nd Respondent herein as a shareholder of the Plaintiff so that the Plaintiff Company does not suffer any detriment arising from the said fraudulent loan advanced in the year 2007”. The court also concluded that since the issue of fraud had already been dealt with in the 2015 judgment, for which reason, the reliefs in relation to fraud pertaining to the grant of the loan is caught by the doctrine of *res judicata*.

THE GARNISHEE PROCEEDINGS BEFORE THE HIGH COURT

On 20th January, 2022 counsel for Appellant herein moved a Motion Ex-parte for garnishee order nisi to be issued in execution of the 2012 Judgment. The application was granted as prayed and the court issued a garnishee order nisi against the Bank of Ghana for the Bank’s representative to appear in court to show cause why monies standing to the credit of the 1st Defendant/Judgment Debtor/Applicant therein (1st Respondent herein) should not be paid to the Plaintiff/Judgment Creditor/Applicant therein (Appellant herein). The court ordered hearing notices to be served on the representative of Bank of Ghana as well as the Defendants/Judgment Debtors therein (Respondents herein).

When it came to the notice of the 1st Respondent that the Appellant had obtained a garnishee order nisi against it, it filed an application to set aside same. Appellant herein filed an affidavit in opposition to the motion on notice to set aside the garnishee order nisi. After hearing the application, the learned judge set aside the garnishee order nisi.

She concluded as follows:

“As already discussed, the Court in Exhibit 2 stated that if Respondent has any claim for non-payment of that loan, it would only arise personally against 2nd Defendant herein.

That based on the findings of fraud, whatever can be proved as validly due respondent should be paid personally by 2nd Defendant and not Applicant herein. And the Court in Exhibit 3 having given the reason for not setting aside the judgment of the present suit was because it also affected the 2nd Defendant herein who the Court found to be complicit in the fraudulent application and disbursement of the loan.

Flowing from these, it is the Court’s opinion that the said judgment in Exhibit A cannot be enforced against the Applicant.

Had all these material facts been brought to the attention of the Court in the application for Garnishee Order Nisi to issue, this Court would not have granted the instant application.

It is for this reason that the Motion to set aside the Garnishee Order Nisi filed on 23rd May 2022 be and is hereby granted.

The Garnishee Order Nisi issued by the Court on 20th January 2022 is hereby set aside.

Costs of Ten Thousand Ghana Cedis (GH¢10,000.00) is awarded against Respondent for Applicant.”

GROUND OF APPEAL

Dissatisfied with the ruling of the trial court dated 13th December, 2022 the Appellant filed a Notice of Appeal on 16th December, 2022 (see: pages 149 to 150 of Volume 2 of the Record of Appeal) invoking this Court's appellate jurisdiction on the following grounds:

- i. The learned trial judge erred in law by way of improper exercise of discretion.

PARTICULARS OF ERROR OF LAW

- a. The learned trial judge erred in law by way of improper exercise of discretion by discharging as garnishee order nisi against a judgment debtor when evidence of payment had not been established.

- b. The learned trial judge erred in law by way of improper exercise of discretion by treating an unsatisfied judgment as enforceable against only one of the judgment debtors.
- ii. Further grounds will be filed upon receipt of the Ruling of the High Court.

SUMMARY OF SUBMISSIONS OF LEARNED COUNSEL

Submissions of learned counsel for Appellant in support of the appeal can be summarised as follows:

1. Learned counsel for Appellant submitted that enforcement of judgment of payment of monies is governed by Order 43 rule 1(b) of the High Court Civil Procedure Rules, 2004 (C.I. 47). Order 47 of C.I. 47 regulates such proceedings which is open to a judgment creditor so long as his judgment debt remains unsatisfied. That in the motion to set aside the garnishee order nisi, no evidence of payment was presented by the 1st Respondent to the court to warrant the discharge of a garnishee order nisi.
2. Counsel relied on the oft-cited case of **Majolagbe v. Larbi & Ors. [1959] GLR 190**, where the Court stated that:
 "Proof, in law, is the establishment of fact by proper legal means; in other words, the establishment of an averment by admissible evidence" and argued that the 1st Respondent ought to have established evidence of payment of the 2012 judgment debt to warrant the discharge of the garnishee order nisi. That in the absence of such evidence, the trial court ought not to have impeded the realisation of the Appellant's judgment.
3. Counsel argued that so long as the 2012 judgment has not been set aside, the indebtedness of 1st Respondent remains extant. Counsel relied on the case of **PUNJABI BROTHERS VS NAMIH [1962] 2 GLR 46**, where the Court held as follows:
 "... it does not appear to be open to him, without first getting the judgment set aside, and while it is still subsisting, of full force and effect, to ask another court of co-ordinate jurisdiction in another case in which other issues are raised, to pronounce a judgment of a superior court, which has

not been set aside, to be null and void. The law seems to be clearly enough settled that so long as a judgment of a superior court remains undischarged and of full force and effect, it is not competent to another court of coordinate jurisdiction to pronounce against its validity, however palpably erroneous it may appear to be"

4. It was also submitted that 1st Respondent's argument that the 2015 judgment had varied the 2012 judgment is a misapplication of the law. That a judgment of a court of coordinate jurisdiction cannot extinguish each other's judgment.
5. That the trial court below has exercised its discretion based on wrong principles. To buttress this point, counsel relied the case of **KYENKYENHENE v. ADU (2003-2004) 1 SCGLR 142** where the Supreme Court made reference to the English case of **Charles Osenton and Co. v. Johnson [1942] AC 130** where Viscount Simon L.C. said-
 "The law as to the reversal by a Court of Appeal of an order made by a judge below in the exercise of his discretion is well established and any difficulty that arises is due only to the application of well-established principles in an individual case. The appellate tribunal is not at liberty merely to substitute its own exercise by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. But if the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion, in that no weight, or no sufficient weight has been given to relevant considerations, such as those urged before us, by the appellant, then the reversal of the order on appeal may be justified." In sum Appellant's case is that the Court exercised its discretion wrongly when it set aside the Garnishee Order Nisi.

On the other side of this debate, counsel for 1st Respondent submitted as follows:

1. First, counsel took aim at the grounds of appeal filed by the Appellant. He argued that the Appellant's sole ground of appeal that "The learned trial judge erred in law by way of improper exercise of discretion" is clearly vague, as it

fails to contain the precise error of law. In support of this position, counsel reiterate the opinion Adzoe JSC in **Nasib Dahebieh v. S. A. Tarqul & Brothers, Unreported Case of the Supreme Court, Civil Appeal No. 8/2001 (dated the 29th day of May 2002)** wherein he states that the ground of appeal "must clearly and concisely indicate in what manner the trial judge mis-directed himself either on the law or on the facts". Counsel relies on the above authority among other authorities and invites the court to dismiss the appeal, as the same is incompetent.

2. Counsel submits that this being an interlocutory appeal challenging the discretion of the judge, it was incumbent on the Appellant to establish that the discretion of the judge was not exercised judicially. Reference was made to the case of **Sunbeltic Company Limited v Tema Development Corporation, Sethi Brothers, Sethi Realty Company Limited Civil Appeal No. J4/04/2020 (Judgment is dated the 14th day of April 2021)**, where the Supreme Court stated the principle governing appeals against the discretion by making reference to **Charles Osenton & Co v Johnston [1942] A.C. 130 at 138H.L** and the holding of Viscount Simon LC:

"The law as to the reversal by a court of appeal of an order made by the judge below in the exercise of his discretion is well-established, and any difficulty that arises is due only to the application of well-settled principles in an individual case. The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. But if the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified."

For learned counsel, the above authority together with other authorities which he relied on, has bolstered his position that that the Court below properly exercised its discretion in favour of 1st Respondent by setting aside the said

garnishee order nisi obtained solely against the 1st Respondent herein taking into account the other judgments of the Court (particularly the 2015 Judgment) which the Appellant has not appeal against.

3. Counsel also submitted that a garnishee order nisi may be set aside where the person so affected is not liable to pay the debt. That, it is evident that the Court was justified in setting aside the garnishee order nisi, as the 1st Respondent is not liable for the debt.
4. Counsel also argued that if the court had made the garnishee order nisi absolute, it would have amounted to an unjust enrichment of the Appellant. In that regard, counsel relied on the case of **Nartey-Tokoli v Volta Aluminium Co. Ltd (No.3) [1989-1990] 2 GLR 513 at page 518**, where the Court states that:

"It is a basic requirement for all Courts which practice equity, to deny unjust enrichment to all suitors. No Court should allow unmerited largesse to the detriment of an innocent party."

ANALYSIS AND DECISION OF THE APPELLATE COURT

Before we go into the merits of the appeal, we would tackle counsel for 1st Respondent's query relating to the competence of the appeal. In his written submission to the court, counsel launched a frontal attack on the first ground of appeal filed by the appellant.

The grounds of appeal are means by which an appellant has an opportunity to show the appellate court that there was a judicial error and that the error was such that a wrong conclusion was reached that resulted in an unjust outcome. The grounds of appeal must be couched in such a way that it satisfies procedural requirement.

Rule 8 (4) the Court of Appeal Rules, 1997 (CI 19) provides that:

"Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated."

In **Rev. Dr. Seth Mensah Ablorh v Mrs Theodora Alberta Quartey, Unreported Case of the Court of Appeal, Civil No. H1/53/2021 (and dated the 17th day of June 202)** which was cited by learned counsel for 1st Respondent and which this court finds same to be useful, the Court held that:

"A ground of appeal alleging error in law must contain a precise, clear and unequivocal and direct statement of the alleged error...it is not sufficient merely to complain that the trial judge failed to appreciate how the appellant would be affected by his ruling without stating the defect or the nature of the error in the ruling."

Also, in **Martey vrs Abrampah [2013] 57 GMJ 133**, the Court of Appeal per Aduama Osei, JA also dealt with the issue in the following terms:

"The Rules of this Court, CI 19, as provided by Rule 8 (4) that where "the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated." By ground (ii), the defendant appears to be contending that the trial court's ruling that the undeveloped portion of the Traos Crescent property solely belonged to the plaintiff was legally flawed. Similarly, by ground (iii), the defendant appears to be contending that the third trial court's ruling that a two-third part part of the newly constructed house on the Sai Kojo Street property belonged to the plaintiff was legally flawed. In respect of both grounds (ii) and (iii), therefore, the defendant was obliged to state clearly particulars of the flaws alleged by her in respect of the rulings. This, however, has not been done, with the result that the grounds, as they stand, are vague and fail to convey to the plaintiff or the Court any idea as to the matters the defendant intends to argue under them. I consider this unacceptable."

It goes without saying that where a ground of appeal alleges an error of law, the particulars of the error ought to be given or else the ground of appeal may be struck out as incompetent.

For the sake of emphasis, we would reproduce verbatim the grounds of appeal filed by the Appellant. It reads as follows:

- i. The learned trial judge erred in law by way of improper exercise of discretion.*
- PARTICULARS OF ERROR OF LAW*

- a. *The learned trial judge erred in law by way of improper exercise of discretion by discharging as garnishee order nisi against a judgment debtor when evidence of payment had not been established.*
 - b. *The learned trial judge erred in law by way of improper exercise of discretion by treating an unsatisfied judgment as enforceable against only one of the judgment debtors.*
- ii. *Further grounds will be filed upon receipt of the Ruling of the High Court.*

The grounds of appeal speak for themselves. It is palpably clear that appellant's allegation of error of law relating to improper exercise of discretion was immediately followed by particulars of the alleged error. Consequently, learned counsel's submission that the said ground of appeal was not particularized is inconsistent with the record. Without belabouring the point, we conclude that learned counsel's attack on the competence of the ground of appeal is misconceived and the same is dismissed.

Coming back to the grounds of appeal, it is apparent from the record that appellant failed or refused to file any additional ground of appeal, as indicated in ground (ii) of the grounds of appeal. We shall, therefore, proceed to consider the sole ground of appeal i.e. that the learned trial judge erred in law by way of improper exercise of discretion when she set aside the garnishee order nisi.

The procedure for Garnishee proceedings is guided by Order 47 of the High Court (Civil Procedure) Rules, 2004 C.I. 47. Order 47 Rules 1 & 2 read:

1. (1) *Where a person in this Order referred to as "the judgment creditor" has obtained a judgment or order for the payment of money by some other person referred to as "the judgment debtor" and the judgment order is not for the payment of money into court, and another person within the jurisdiction, referred to as "the garnishee" is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing to the judgment debtor from the garnishee, or as much of it as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.*
- (2) *An order under this rule shall in the first instance be an order to show cause, and shall specify the time and place for further consideration of the matter, and in the meantime attach such debt as is mentioned in sub rule (1), or as much of it as*

may be specified in the order, to satisfy the judgment or order mentioned in that sub rule and the costs of the proceedings.”

2. An application for an order under rule 1 shall be made ex-parte supported by an affidavit that

(a) identifies the judgment or order to be enforced and states the amount remaining unpaid under it at the time of the application; and

(b) states that to the best of the information or belief of the deponent, the garnishee is within the jurisdiction and is indebted to the judgment debtor and states the sources of the deponent's information or the grounds for the deponent's belief.

Applications for garnishee proceedings are made to the court by the judgment creditor and the orders of the court come in two steps, namely: the order nisi and the order absolute. An order nisi is a conditional or temporary order that would not take effect unless the person affected by it or against whom it is made appears in court within a certain time to sufficiently show cause or reason why it should not take effect.

By Order 47 rules 1 & 2 of CI 47, garnishee proceedings may be commenced by an ex-parte application brought by the judgment creditor and supported by an affidavit showing:

1. that the judgment creditor had obtained a judgment against the judgment debtor for the recovery or payment of money;
2. that the judgment is still unsatisfied and to what amount; and
3. that any other person, called a garnishee, is holding monies to the credit of the judgment debtor and is within the jurisdiction.

When on the face of the ex-parte motion the court is satisfied that the affidavit evidence provides sufficient basis for further interrogation, the court may issue a garnishee order nisi inviting the garnishee to come to court to show cause why the garnishee order nisi should not be made absolute.

By Order 47 rule 3, the garnishee order nisi is not only served on the garnishee but the judgment debtor as well. This is designed to satisfy the judgment debtor's right to fair hearing. Thus, upon service on the judgment debtor, he is given the opportunity to provide the court with information he may have on the debt by affidavit before further consideration of the matter. See the case of **Lovely v White (1983)12 LR Ir 381**.

Speaking on the right of the judgment debtor to be heard before the making of the order absolute, Goddard CJ in the case of **Dawson v Preston Law Society [1953] 3 All ER 314** observed at page 315 of the report as follows:

"Where garnishee proceedings are taken, the garnishee order nisi under R.S. C Ord. 45, r1 to be served on the judgment debtor, and it would be a mere farce if he were not entitled to appear on the hearing to make the order absolute and to submit any arguments he might have. It might be that the judgment debtor would desire to say; "I do not mind what the garnishee is saying in this case; I want to show that there is no attachable debt here. Ordinarily, the garnishee would probably take the point, but one can well imagine a case in which the garnishee would not take the point and then the judgment debtor would be entitled to take it because he could succeed in defeating the order absolute, he might be able to recover the debt."

In view of the above, a garnishee order nisi may be set aside upon an application filed by the judgment debtor on the ground that he is not liable to pay the debt. Setting aside a garnishee order nisi implies the order nisi has not been made absolute. This is an exercise of discretion by the court, as recognised by the Supreme Court in the case of the **Republic v the High Court (Commercial Division) Ex Parte Attorney General, Zenith Bank (Interested Party/Respondent) Civil Motion No. 15/08/2019 (dated the 10th of April 2019)** wherein the Supreme Court per Dordzie JSC held at page 8 of the judgment as follows:

"The power to make the order absolute is a discretionary power, as such the court is obliged to take into account any matters raised by the judgment debtor before making the order absolute."

Again, it is the fairness and correctness of the court's exercise of discretion in setting aside the garnishee order nisi that is the focus of this appeal.

It is trite learning that an appellate court ought not to interfere with the exercise of discretion by a trial court merely because it would have arrived at a different conclusion on the facts. In **Charles Osenton & Co v Johnson [1942] AC 130 at 138**, it was emphatically stated that since the discretion belongs to the court below, appellate courts are not to substitute their own discretion for that of the trial court, regardless of their conviction about the matter.

Interference with the exercise of discretion must, therefore, be justified in

accordance with established legal principles. In **Lamprey v Lamprey and Others [2021] GHASC 103**, the Supreme Court stated that:

"The primary requirement for the exercise of discretion is that it must be grounded in the law and facts of the matter before the court. The direction of the law is that an appellate court ought not to disturb the exercise of discretion by a judge who heard the parties unless certain factors are present which would render the exercise of discretion perverse."

In **Adu (per attorney) Akonnor v Ghana Revenue Authority [2013–14] 2 SCGLR 1176**, the Supreme Court, citing with approval **Ballmoos v Mensah (1984–86) 1 GLR 725**, stated that an appeal against the exercise of discretion will succeed where the discretion was exercised on wrong or inadequate materials, or where the lower court acted under a misapprehension of fact by giving weight to irrelevant or unproved matters or omitting to consider relevant matters.

The same principle was earlier articulated in **Crentsil v Crentsil [1962] 2 GLR 171 at 175**, where it was held that an appeal against the exercise of discretion can only succeed on the ground that the discretion was exercised on wrong or inadequate materials, or where the court acted under a misapprehension of fact by considering irrelevant matters or omitting relevant considerations.

In **Sappor v Wigatap Ltd [2007–2008] 1 SCGLR 676 at 679**, Georgina Wood JSC (as she then was) reiterated that an appeal against a discretionary decision will succeed only in clearly exceptional cases where the judge failed to act judicially, applied wrong principles, reached a conclusion that would work manifest injustice, or exercised discretion on wrong or inadequate material.

The Court of Appeal further summarised these principles in **Daniel Kamara v NIA Insurance Co Ltd, Suit No. H1/52/2021 (dated 14 October 2021)** as follows:

"The rationale of the principle is that, in determining an appeal against the exercise of discretion, the appellate court is to proceed on the presumption that the decision appealed against is right and that the court below exercised the discretion properly. The appellate court can only interfere if it is shown that the discretion was exercised wrongly, that no weight or insufficient weight was given to relevant considerations, that the discretion is wrong in law or will result in injustice, that the court acted under a mistake of law, in disregard of material principles, under misapprehension of the facts, or took into account irrelevant considerations."

In the present case, appellant has placed great reliance on the dictum of the **PUNJABI BROTHERS case** supra in articulating its stance that since the 2012 Judgment has not been set aside, it is the right of the appellant to enforce the judgment through garnishee proceedings and that the decision of a court of coordinate jurisdiction cannot in anyway truncate its right. Thus, in the estimation of appellant, failure on the part of the court to observe the afore-stated right by taking into consideration the 2015 and 2019 Judgments in setting aside the garnishee order nisi constitutes an error on the part the court in the exercise of its discretionary power.

There is no doubt that garnishee proceedings are a mode of enforcement or execution of judgment. In **Nigerian Breweries Plc v. Dumuje (2016) 8 NWLR (Pt. 1515) 536 at 632 – 633 paras. F-B**, execution was defined to mean the process of enforcing or giving effect to the judgment of the court, and it is completed when the judgment creditor gets the money or other thing awarded to him by the judgment.

It is also trite learning that every judgment of a court ought to be obeyed until it is set aside or declared a nullity. It has been observed that Courts of competent jurisdiction jealously guard their judgments and, therefore, provide adequate protection to such judgments so that the successful litigant is not deprived of the fruits of the judgment unless there is strong reason to do so. See: E Ojukwu and CN Ojukwu, Introduction to Civil Procedure (Helen-Roberts, Nigeria, 2002) 261. What it means is that the right of a judgment creditor to secure a garnishee order absolute in a garnishee proceeding is not absolute. We disagree with appellant's stance that 1st Respondent ought to have established evidence of payment of the 2012 judgment debt to warrant the discharge of the garnishee order nisi. The court's power to discharge or set aside a garnishee order nisi is not based solely on evidence of payment of judgment debt. Other factors may be considered in the exercise of this discretionary power. The court may truncate a garnishee proceeding even in circumstances where the judgment debtor has not paid off the debt. For instance, if there are no funds to be attached, the court would not make the order absolute. In the case of **Webb v. Stenton (1883) 11 QBD 518**, a judgment debtor was entitled to an income for life from a fund vested in trustees, payable in February and August. In November, the judgment creditor sought to attach the said income by garnishee proceedings. It was held that there was no debt owing or accruing at the time when the order was applied for which could be attached.

Depending on the circumstances of the application, it may be improper to allow

garnishee proceedings to continue in the face of a pending application for stay of execution. In this regard, the court held in the **Nigerian Breweries case** supra that:

"I agree with the general view that where there is a pending application for stay of execution, especially in a superior court, it will be absurd for a party to execute the same judgment by way of a Garnishee proceeding on the premise that it is an independent proceeding which is not an execution of judgment and does not require the attention of the judgment debtor. If such judgment is executed, will it not impose on the Superior Court a fait accompli? Is this not indeed the situation abhorred and condemned by the Supreme Court in Vaswani v. Savalakh (Supra)."

Also, under Order 49 rule 1 of CI 47, if there is an order imposing a charge on immovable property to enforce judgments for payment of money, the court may consider it in deciding whether a garnishee order nisi aimed at attaching funds belonging to the judgment debtor should be made absolute. Order 49 Rule 1(1) provides:

"The court may for the purpose of enforcing a judgment or order for the payment of money to a person, by order impose on any immovable property of the debtor a charge to secure the payment of any moneys due or to become due under the judgment or order as may be specified in the order."

It was, therefore, not extraordinary for the court below to consider the judgments of courts of coordinates jurisdiction relating to the judgment debt in issue in the exercise of its discretionary power. It must be noted that the existence of the 2015 and the 2019 Judgments were kept away from the court when appellant applied for the garnishee order nisi.

The Courts have stressed on the need for full disclosure in all matters. In **Trust Bank Limited v GK Appiah & Sons Ltd [2011] 2 SCGLR 894 at page 903**, the Supreme Court held:

"Having kept the essential facts away from the court, how did he expect the court to exercise its discretionary judicially?"

We have times without number stressed the importance of transparency in all judicial proceedings, much more so in applications to invoke a court's discretionary jurisdiction. As a general principle, it is the imperative duty of counsel, as an officer of the court, to make full disclosure of all material facts bearing on the matter under consideration. That is the clearest evidence of candour and good faith, the critical element on which all such applications must be grounded. Withholding

material facts which are peculiarly within the knowledge of a deponent, and turning round to justify void orders made by an unsuspecting court based on the limited information supplied it, on the ground that the opponent did not challenge the facts as presented or failed to supply any of the missing facts makes very poor argument."

Despite appellant's conduct in failing to make full disclosure of material facts in the ex-parte application for garnishee order nisi, we would not hasten to conclude that the absence of these essential facts bordering on the 2015 and 2019 Judgments (albeit not in tandem with best practice of the court) does not affect the validity of the garnishee order nisi itself. In the **Zenith Bank case** supra, Gbadegbe JSC stated at page 14 of the judgment that:

"As a matter of practice, on the hearing of the order nisi, it is sufficient if the affidavit of the applicant states that the deponent is informed and believes that the garnishee is indebted to the judgment debtor. See: (1) Coren v Barne (1889) 22 QBD 249; (2) Vinall De pass [1892] AC 90."

In paragraph 10 of the affidavit in support of the motion ex-parte, it was deposed on behalf of the appellant herein as follows: "That I am advised and believe same to be true that the Applicant is entitled to execute the Judgment against the Defendants by reason of their default to pay the judgment debt." The affidavit evidence provided sufficient grounds for issuance of the garnishee order nisi. Subsequently, the court became seised with the essential facts of the case when 1st Respondent filed an application to set aside the garnishee order nisi. After full disclosure of material information, it became apparent that the 2015 Judgment had held that if the Appellant has any claim for non-payment of the loan, it would only arise personally against 2nd Respondent.

In the 2015 Judgment, the High Court came to the above conclusion after making the following findings;

- i. *With the above evaluation, I do not hesitate to agree with the particulars of fraud set out in Plaintiff's statement of claim. I agree that the 1st defendant knew that the directors of the company have not resolved to borrow yet the granted a loan in an amount far exceeding the Company's stated capital. I also agree that the 1st Defendant knew that the 2nd Defendant had no powers of a managing director and yet it went ahead and*

- dealt with him as such. (see: page 35 of the 2015 Judgment)*
- ii. *... the 2nd defendant "acted without the mandate of [Applicant], its members and directors in applying for an obtaining approval and disbursement of the banking facilities. (see: page 37 of the 2015 Judgment)*
 - iii. *I also find that the employment of an unknown signature to run this account, the presentation of his alleged unanimous appointment as managing director of 4th defendant company, his executions of documentation which lacked validity and authentication h is forgery of the signatures of 2nd and 3^d Plaintiff. (see: page 37 of the 2015 Judgment)*
 - iv. *I also find that the 1st defendant showed a dishonest appraisal of the documentation submitted by the [2nd Defendant), a reckless disregard for the truth", and that this amounted to "fraud on the part of [Respondent] against its customer [Applicant) to whom it stood in the capacity of fiduciary. (see: page 37 of the 2015 Judgment)*

Even though the 2019 Judgment refused to set aside the 2012 Judgment, it reaffirmed the findings of the 2015 Judgment. The Court also agreed with the position that, in the light of the fraudulent act perpetrated against the 1st Respondent, the loan amount must be settled by the 2nd Respondent.

The position of this court is that it would have amounted to an injustice of epic proportions for the court below to ignore the judicial pronouncements in the 2015 and 2019 Judgments in the exercise of its discretion simply because the said judgments emanated from courts of coordinate jurisdiction. By taking cognisance of the 2015 and 2019 Judgments, the court's discretion was exercised on strong footing and we have no reasons to describe it as erroneous. In the face of the finding of fraud against the 2nd Respondent and the Appellant itself, coupled with the holding that the 2nd Respondent shall be liable for payment of the loan, the discretion exercised by the Court in setting aside the garnishee order nisi was in tune with equity and good conscience. We conclude that the court below acted judicially and reached a conclusion that promoted substantial justice. We therefore decline Appellant's invitation to overturn the ruling of the High Court (Commercial Division), Accra in setting aside the garnishee order nisi dated 18th January, 2022.

For the foregoing reasons, the appeal is dismissed.

Cost of Fifteen Thousand Ghana Cedis awarded in favour of the 1st Defendant/Appellant/Respondent.

DR. RICHMOND OSEI-HWERE
(JUSTICE OF THE COURT OF APPEAL)

I agree

DR ERNEST OWUSU-DAPAA
(JUSTICE OF THE COURT OF APPEAL)

I also agree

CHARITY AKOSUA ASEM
(JUSTICE OF THE COURT OF APPEAL)

COUNSEL

FOR PLAINTIFF/RESPONDENT/APPELLANT - WILLIAM SANNAISE MENSAH

**FOR 1ST DEFENDANT/APPELLANT/RESPONDENT - NANA BOAKYE MENSAH
BONSU**