

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON FRIDAY THE 4<sup>TH</sup> DAY OF APRIL, 2025**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/1615/2022**

**MOTION NO.: M/10058/2022**

**BETWEEN:**

**SULEIMAN OLALEKAN -- JUDGMENT CREDITOR/APPLICANT**

**AND**

- |  |   |                             |
|--|---|-----------------------------|
| <b>1. INDEPENDENT CORRUPT PRACTICES &amp; OTHER<br/>RELATED OFFENCES COMMISSION (ICPC)</b>       | } | <b>JUDGMENT<br/>DEBTORS</b> |
| <b>2. THE CHAIRMAN, INDEPENDENT CORRUPT<br/>PRACTICES &amp; OTHERRELATED OFFENCES COMMISSION</b> |   |                             |
| <b>3. HON. MIN. OF JUSTICE &amp; ATTORNEY GENERAL<br/>OF THE FEDERATION</b>                      |   |                             |

**AND**

**CENTRAL BANK OF NIGERIA ----- GARNISHEE**

**RULING ON MOTION NO. M/2422/2022**

In this Post Judgment Proceeding, the Applicants/Judgment Debtors are seeking for Order of this

Court to set aside the Garnishee Order Nisi of this Court made on the 8<sup>th</sup> day of November, 2022, which was based on the Judgment of my brother, Shafa J. of Court 49 as he then was. According to the Applicant, the Court lacks jurisdiction to entertain the Motion for Garnishee Order Nisi.

They also want in the alternative for this Court to vary the Garnishee Order Nisi of 8<sup>th</sup> day of November, 2022, and Stay the Garnishee Proceeding pending the Hearing and determination of the Application by the Applicants for extension of time to Appeal, and Stay of Execution of the said Judgment filed before the Court of Appeal. The ground is based on the following facts:

- i. This Honourable Court sitting at Gwagwalada delivered its Judgment in this Suit on 7<sup>th</sup> July, 2022.
- ii. The Judgment Debtors/Applicants, in exercise of their right of Appeal, had filed an application for extension of time to Appeal against the said Judgment, and same is pending before the Court of Appeal, Abuja Division.
- iii. The Applicants are desirous of diligently prosecuting the Appeal to its logical conclusion.
- iv. The Judgment Debtors/Applicants became aware of the Garnishee Order Nisi on 15<sup>th</sup> November, 2022.
- v. Jurisdiction is a threshold issue, and can be raised at any time.

- vi. By the locus classicus of *Madukolu V. Nkemdilim*, a Court of law can only assume jurisdiction where the case comes before it by due process, and upon the fulfillment of any condition precedent to the exercise of jurisdiction.
- vii. It is trite law that when the law prescribes the mode and procedure in which a thing is to be done, it is only that method that must be followed; any act to the contrary is a nullity.
- viii. Section 84 (1) of the Sheriff and Civil Process Act, 2004 obligates the Judgment Creditor/Respondents to obtain the consent of the Attorney General of the Federation before instituting any Garnishee Proceeding against the Applicants.
- ix. The Ex-parte application of the Judgment Creditor/Respondent filed on 22<sup>nd</sup> August, 2022, pursuant to which the Order Nisi of 8<sup>th</sup> November, 2022 was made, failed to comply with the mandatory provisions of Order 46 Rule (1 & 2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018 by stating all necessary particulars of Garnishee as relates to Judgment Debtors.

IN THE ALTERNATIVE:

- x. The Garnishee Proceedings, and the Order Nisi, if not stayed, would occasion a fait accompli on the Court or the Court of Appeal.

- xi. This Court has an inherent duty cum responsibility to prevent a situation that could foist hardship or complete helplessness to any subsequent Order or Judgment made by the Court of Appeal.
- xii. The Judgment Creditor/Respondent is aware of the Applicants' Motion for Stay of Execution.
- xiii. This Honourable Court has the inherent jurisdiction to set aside the Garnishee Order Nisi.
- xiv. This Honourable Court has the power to vary an Order made Ex-parte.
- xv. The Judgment Creditor will not be prejudice if the Garnishee Proceedings is stayed pending the Hearing and determination of the Applicants' Motion for Stay of Execution already before the Court.

They filed Affidavit of 6 paragraphs and attached some documents which are marked as **EXH ICPC 1 & 2**. They are mainly pending application at the Court of Appeal and proposed Notice of Appeal too. The facts in the Affidavit are deemed as if set hereunder seriatim.

In the Written Address which they adopted they raised 2 Issues for determination which are:

- (1) Whether this Court should set aside the Garnishee Order Nisi for lack of jurisdiction, the Judgment Creditor having failed to satisfy the requirement of the law.**

**(2) Whether given the peculiar facts and circumstances in this case and in the interest of justice, this Court can and should exercise its discretion to grant the Relief sought.**

**On Issue No. 1**, they submitted that Court should set aside the Garnishee Order Nisi as the Judgment Creditor failed and neglected, refused to obtain consent of the Attorney General of the Federation before suing the Judgment Debtor as provided in **S. 84 (1) of the Sheriff and Civil Process Act**. That they also failed to comply with **Order 46 Rule 1 & 2 of the High Court Rules**. Hence the Court should hold that the Garnishee Order Nisi is a nullity. They referred to the case of:

**Chukwudi V. AMCON  
(2019) LPELR – 47318**

**Madukolu V. Nkemdilim  
(1962) All NLR 589**

That the Judgment Creditor did not bring the application for the Garnishee Order Nisi following due procedure permitted by law, and did not fulfill the condition precedent.

That CBN as a Garnishee is a public officer within the extant laws, and that the consent of the Attorney General of the Federation ought to be sought and obtained prior to the attachment of the money of the Judgment Debtor in custody of the CBN. That obtaining such consent is mandatory. They referred to the case of:

**CBN V. Amao**  
**(2010) 16 NWLR (Pt. 1219) 271**

**Utomudo V. Mil. Gov. of Bendel**  
**(2015) 3 E JSC 1**

That the Judgment Creditor having failed to comply with the provision of **S. 84 (1) of the Sheriff and Civil Process Act** the Garnishee Order Nisi is a nullity. That CBN is a public officer. They referred to the case of:

**Citibank V. Abia State Internal Revenue Service**  
**(2015) LPELR – 46246 (CA)**

That the Judgment Creditor failed to comply with **Order 47 of the High Court Rules.**

That the non-compliance with the Rules of Court affects the jurisdiction of the Court to entertain the Garnishee Order Nisi/Proceeding. Hence, Court should set aside the said Garnishee Order Nisi. That this Court has power to set aside its Order which is given without jurisdiction. He urged Court to set aside the said Garnishee Order Nisi.

**On Issue No. 2**, they submitted that the Court can exercise its discretion and grant the Relief sought given the circumstance of this case. They referred to the following case:

**Jonas Agu && Anor V. Commissioner of Police**  
**(2016) LPELR – 40026 (CA)**

**Oyekanmi V. NEPA**  
**(2000) 15 NWLR (Pt. 690) 414**

**ICAN V. Attorney General of the Federation  
(2004) 3 NWLR (Pt. 859) 186**

That the Judgment Debtor had filed an application for Stay of Execution of the Judgment pending at the Court of Appeal. That Court should take judicial notice of same and set aside the Garnishee Order Nisi, and hear the Motion for Stay of Execution before taking any further step in the case. That the Court as well as the Judgment Debtor can apply to set aside the Garnishee Order Nisi. They referred to the case of:

**NOAC V. Ogini  
(2011) 2 NWLR (Pt. 1230) 131 @ 152 – 153**

**Fidelity Bank V. Okwuowilu supra**

That if the Stay of Execution succeeds, and the Garnishee Order Nisi is made Absolute, that it will render the Stay nugatory and foist on the Court a fait accompli. They referred to the case of:

That there is a Notice of Proposed Appeal yet to be filed. They urged the Court to Set Aside the Garnishee Order Nisi and determine the Stay of Execution as doing so will be in the interest of justice to all.

Upon receipt of the Motion to Set Aside, the Judgment Creditor filed a Counter Affidavit of 7 paragraphs, and averred that that the consent of the Attorney General of the Federation is not needed because it is a party to the Suit, and that the CBN is in custody of the money of the Judgment Debtors going by the advent of TSA which came

into effect on 15<sup>th</sup> September, 2015. That the Judgment Debtor is one of the government agencies affected by the TSA. They referred to the **CBN Guideline on TSA**.

That there is no pending Stay of Execution before this Court. That the Applicant has failed to deposit the money in an Interest Yielding Account as required by **Order 46 of the High Rules** pending the determination of the Appeal and/or Stay.

That the Garnishee has in paragraph 6 of the Affidavit in support admitted that the Judgment Debtors' money is in its possession.

They had urged Court to refuse the application and hold that it has jurisdiction to entertain the Garnishee Proceeding and to make the Garnishee Order Nisi Absolute.

That the Applicant failed to show that there is a pending Stay of Execution, hence, not complying with **Order 61 of the High Court Rules**.

In their Written Address they submitted that the Attorney General of the Federation being a party to the Judgment on which the Garnishee Order Nisi is premised, need not give its consent before he pays the debt. Again, that CBN, the Garnishee, is equally **not** a public officer. Hence, the submission of the Applicant in that regard has no merit at all. They referred to the cases of:

**Purification Techniques (Nig) Ltd V. A-G Fed.**  
**(2004) All FWLR (Pt. 211) 1479**

**Central Bank of Nigeria V. Interstella Comm. Ltd  
(2018) 7 NWLR (Pt. 1618) 294 @ 339**

That the Judgment Debtors approached the Court of Appeal for leave to file Notice of Appeal out of time and Motion for Stay of Execution of the Judgment. That they never approached this Court with such application let alone the Court refusing same before approaching the Court of Appeal. That the action is in contravention to **Order 61 of the FCT High Court Rules**. They referred to the case of:

**Central Bank of Nigeria V. Interstella Comm. Ltd supra**

That Stay of Execution has not been filed before this Court. The Judgment Creditor concluded submitting thus:

- (a) That the Judgment Debtors/Respondents is not a party in Garnishee Proceeding as clearly postulated by Justice Ogunbiyi J.S.C. in CBN V. Interstella Communication Nigeria Ltd (Supra) reiterating the Court of Appeal decisions in UBA PLC V. Iboro Ekanem (2010) 6 NWLR (Pt. 1190) 207 @ 226, Para H.
- (b) That the Judgment Debtors/Respondents had not filed any Process known to law before the Court which the Court of law should look into before taking any decision at all.
- (c) That there is no Notice of Appeal let alone a pending Appeal, but what the 1<sup>st</sup> and 2<sup>nd</sup> Judgment Debtors/Respondents filed is a pending Motion for leave

- to Appeal, and that same is pending before the Court of Appeal, and not even before this Honourable Court.
- (d) That the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors/Respondents has not complied with the Rules of this Court for a monetary Judgment Debtor who wants to stay the Judgment of this Honourable Court by way of depositing the Judgment sum with the Registrar of the Court.
  - (e) That the 1<sup>st</sup> & 2<sup>nd</sup> Judgment Debtors/Respondents is only out to frustrate the Judgment Creditor, hence, this frivolous application.
  - (f) That a Judgment Debtor cannot stay execution of the Garnishee as stated in UBA PLC V. Iboru Ekanem (2010) 6 NWLR (Pt. 1190) 207 @ 226, Para H.
  - (g) That this application is brought before this Court to stall the progress of the Garnishee Proceedings.

The Applicant filed a Reply on Points of Law to the Counter Affidavit of the Judgment Creditor/Respondent. They submitted/replied that the case of CBN V. Interstella Comm. Nig Ltd did not in any way directly state that the consent of the Attorney General of the Federation was unnecessary. That the law provides that where consent is require, it must be obtained, and failure to so obtain such consent before proceeding with Garnishee Proceeding will deny the Court jurisdiction to entertain that, and where that is the case, such Garnishee Order Nisi will be a nullity. That the fact that the Attorney General of the Federation was made a party notwithstanding that the

failure to obtain his consent, makes the Garnishee Order Nisi a nullity, and that the Court should hold that it has no jurisdiction to do so and should Set Aside the Garnishee Order Nisi as sought in this application.

That the said case is not a general application as the present case is an expiation. The urged the Court to so hold and discountenance the Counter Affidavit.

## **COURT**

This Court has summarized the stands of the parties for and against the application respectively. It is the humble view of this Court that there is no merit in the application as the Garnishee is not a public officer.

The Judgment Debtor is not a party of a Garnishee Order Nisi/Garnishee Proceeding as it is only between the Judgment Creditor and the person who has the money of the Judgment Debtor in its custody which is the Garnishee. The notification of the Judgment Debtor is mere supplusage. After all, the same Garnishee was fully served with the Garnishee Order Nisi, and the Judgment Debtor was equally served.

Again, this Court shall not Set Aside the Garnishee Order Nisi as sought in this application because it has jurisdiction to entertain same, and the Respondent/Judgment Creditor satisfied the requirement of the law.

This Court cannot therefore grant the Reliefs sought in this application.

The Judgment Creditor/Respondent need not seek and obtain the consent of the Attorney General of the Federation who is listed in the application as one of the parties/Applicants. Service of the Garnishee Order Nisi on it suffices. Besides, the Central Bank of Nigeria (CBN) is not a public officer and not a public office, going by the decision in the case of:

**Central Bank of Nigeria V. Interstella Comm. Ltd supra** as well as in the case of:

**UBA PLC V. Iboro Ekanem**

**(2010) 6 NWLR (Pt. 1190) 207 @ 226, Para H**

To start with, by the provision of **S. 84 (2) of the Sheriff and Civil Process Act**, the Order of Notice must be served on such public officer. In this case the Attorney General of the Federation was duly served with the Garnishee Order Nisi as seen in the Endorsement and Return copy. Again, the Garnishee was equally served.

The fact that the Attorney General of the Federation is listed as a party in the Garnishee Proceeding and was served with both the Judgment in the main as well as the Garnishee Order Nisi means that that met the requirement of the law, and there is no need to separately seek the consent. Besides, the provision of **84 (2) of the Sheriff and Civil Process Act** did not state the method of obtaining consent. It never provides that the consent should be in a

separate application in writing. By the community reading of **84 (1) & (2) of the Sheriff and Civil Process Act** states thus:

**“In such cases the Order of Notice must be served on such public officer ... as the case may be.”**

By the above it is clear that the notification is complete by the service of the Garnishee Order Nisi on the public officer in whose custody the money of the Judgment Debtors is. If it was the intendment of the Drafters of the law that there should be a separate written application or letter of consent, it should have been stated. But in this case it stated that “Notice of the Order must be served on such appropriate officer or public officer”. Hence, it is my humble view that service of the Notice of the Garnishee Order Nisi on the Attorney General of the Federation is consent sought and obtained. Hence, the Judgment Creditor/Respondent complied with the provision of the law in that regard.

Again, with the advent of Treasury Single Account (TSA), it is not a secret that the Central Bank of Nigeria (CBN) has become the custodian of the money of government and its agencies in Nigeria, and since then it has become and is always listed as Garnishee. Please see the **Guidelines for the operation of Treasury Single Account in Nigeria**. See also the website <https://www.cbn.gov.ng>.

By that Law/Regulation all monies of the government and its agencies including the 1<sup>st</sup> Judgment Debtor are paid into the TSA, and it is operated by the Garnishee in this

case. All such monies are in the custody of the CBN. By the said advent of TSA, the CBN is not only the Bankers Bank but also the Banker of Government and all its Agencies. The CBN now plays the role as Custodian of monies of Government Agencies. Since the CBN had decided to play that role, it is prone and should be treated like any other Bank which holds previously and was custodian to the monies of such Government Agencies like the 1<sup>st</sup> Judgment Debtor. So when the spirit decides to appear wine and dine with mere mortals, whatever that treatment that is meted to the mere mortal should be meted to such spirit. So since the CBN now act like any other Bank in keeping in its custody the monies of Government Agencies like the 1<sup>st</sup> Judgment Debtor, it should be treated as any such other Bank where issue of Garnishee is concerned. It is not, in my humble view, a public officer *stricto sensu*. It is a Garnishee, and no consent is needed.

But even where it claims to be a public officer which it is not, the notification of the Garnishee Order Nisi on the Attorney General of the Federation suffices. So this Court holds that both ways the Respondent/Judgment Creditor complied with the provision of **84 (1) & (2) of the Sheriff and Civil Process Act** as well as the other laws where consent is required.

Also, by the interpretation in the **Interpretation Act**, Public Officer means member of Public Service of the Federation. That means that the Attorney General of the Federation is a public officer. But CBN is not a public officer. So this Court holds.

Based on all the above, CBN is **not** a public officer, and they maintain the Account of the Judgment Debtors, and the Judgment Debtors' money is domiciled in the CBN by the advent of the TSA. Hence, this Court has the jurisdiction to entertain and grant the Garnishee Order Nisi, and shall not set aside as sought.

Again, a look at the documents attached by the Applicant in this application, there is no Process showing that the Court of Appeal has stayed the Judgment of the Court in this case. What the Applicant attached is only the proposed Notice of Appeal and application for leave to file a Stay of Execution. There is no evidence to show that the leave to file a Stay of Execution has been granted or that the Execution of the Judgment has been stayed. The Applicant only attached a Motion for Extension of Time to seek leave to Appeal – **EXH ICPC 1. EXH ICPC 2** is only a Proposed Notice of Appeal. No Notice of Appeal has been filed.

Since there is no Order for leave to file Appeal and/or no evidence of Stay of Execution of the Judgment, it means that the application for Garnishee Proceeding and the Garnishee Order Nisi granted was done following due procedure permitted by law. It complied with the provision of **84 (1) & (2) of the Sheriff and Civil Process Act.**

Again, CBN is not a public officer as the Applicant erroneously claimed. Again, the Attorney General of the Federation, being a party in the application, was duly notified by the service of the Process – Garnishee Order Nisi on them, hence, there is no further need to seek its consent

as it is already in the know about the Order. This Court has the jurisdiction to make the Order.

From all indication, this application to Set Aside the Garnishee Order Nisi or in the alternative, to Stay the Garnishee Proceeding, lacks merit. It is only a ploy to deny the Judgment Creditor/Respondent the enjoyment of the fruit of its Judgment. Based on that the said application is hereby **dismissed**.

**This is the Bench Ruling of this Court.**

**Delivered today the \_\_\_\_\_ day of \_\_\_\_\_ 2025 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE

**APPEARANCE:**

JUDGMENT CREDITOR COUNSEL: EFEKEMARAYE G. DANIEL ESQ.  
TITITOPE OLUMUYIWA, ESQ.  
COLLINS E. MARSHALL, ESQ.  
DAMILOLA ABIOYE, ESQ.  
CYRIL L. OJONG, ESQ.

1<sup>ST</sup> & 2<sup>ND</sup> RESPONDENTS' COUNSEL: U.M. NARIMI, ESQ.

3<sup>RD</sup> RESPONDENT COUNSEL: NOT REPRESENTED.

GARNISHEE COUNSEL: ABDULBASIT ABDULMALIK, ESQ.