

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 4TH 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

**1. INDEPENDENT CORRUPT PRACTICES & OTHER
RELATED OFFENCES COMMISSION (ICPC)**

**2. THE CHAIRMAN, INDEPENDENT CORRUPT
PRACTICES & OTHERRELATED OFFENCES COMMISSION**

**3. HON. MIN. OF JUSTICE & ATTORNEY GENERAL
OF THE FEDERATION**

**JUDGMENT
DEBTORS**

AND

CENTRAL BANK OF NIGERIA ----- GARNISHEE

RULING ON PRELIMINARY OBJECTION

In this application, the Garnishee – Central Bank of Nigeria (CBN) filed a Preliminary Objection challenging the

Garnishee Order Nisi which this Court granted on the 8th of November, 2022. It is based on the Judgment of FCT High Court 49 then per Shafa J. The Applicant/Garnishee – CBN, wants the Court to dismiss or strike out the Suit – the Garnishee Proceeding against the Garnishee.

The Preliminary Objection is based on seven (7) grounds which are:

1. This Honourable Court lacks the jurisdiction and/or competence to adjudicate over this matter against the Garnishee by virtue of the provisions of **S. 251 1 (d) of the Constitution of the Federal Republic of Nigeria 1999** (as amended) and **Order 8 Rule 2 of the Judgment Enforcement Right**.
2. The Court of Appeal in **Central Bank of Nigeria V. Kakuri (2016) LPELR - 41468 CA, Central Bank of Nigeria V. Pious Effiong with Suit No: CA/A/1063/2019** delivered on 18th November, 2021, amongst others, held that Garnishee Proceeding against the Garnishee as constituted in the present Suit can only be instituted in the Federal High Court.
3. On the doctrine of *stares decisis*, the decisions of the Court of Appeal are binding on all lower Courts, this Honourable inclusive.
4. The Garnishee/Applicant is by law a Public Officer.

5. The sheriff and Civil Process Act provides that the consent of the Attorney General of the Federation must be sought and obtained first before the funds in the custody of a public officer may be attached by way of Garnishee Proceeding.
6. The Judgment Creditor failed, refused, and neglected to obtain the requisite consent of the Attorney General of the Federation before commencing this Garnishee Proceedings against the Garnishee/Applicant.
7. By virtue of the foregoing, the present Garnishee Proceeding is incompetent and liable to be struck out/dismissed as against the Garnishee/Applicant. This Court lacks the jurisdiction to hear and determine same.

They filed Affidavit of 8 paragraphs and Written Address in which they raised 2 Issues for determination which are:

- (1) Considering the clear provision of S. 251 (1) of Constitution of the Federal Republic of Nigeria 1999 (as amended) and Order 8 Rule 2 of the Judgment Enforcement Rules, whether this Court has the jurisdiction to entertain Garnishee Proceeding against CBN/Garnishee in this case.
- (2) Whether or not it is the law that consent of the Attorney General of the Federation is required before instituting the Garnishee Proceeding against Central Bank of Nigeria in this Suit.

On issue No. 1, they submitted that by **S. 251 (1) of the Constitution of the Federal Republic of Nigeria** (as amended) and **Order 8 Rule 2 of the Judgment Enforcement Rules**, this Court has no jurisdiction to entertain Garnishee Proceeding against the present Garnishee. That the Constitution confers exclusive jurisdiction on the Federal High Court in this regard. They referred to **S. 1. (3) of the Constitution of the Federal Republic of Nigeria** (as amended).

That matters concerning Banking, Banks, and other Financial Institution in Nigeria are handled by the Federal High Court, where the Garnishee is sued as a party.

That by community reading of the **S. 251 (d) and S. 1 (2) and Order 8 Rule 2 of the Judgment Enforcement Rules**, this Court lacks jurisdiction as it is the Federal High Court that has jurisdiction. They referred to the cases of:

CBN V. Kakuri
(2016) LPELR – 41468 (CA)

CBN V. Joseph Azoro & Ors
LPELR – 44389 (CA)

where it was held that Garnishee Proceeding can only be brought in a Court when the Judgment Debtor can sue the Garnishee for debt. They urged Court to resolve the Issue No. 1 in their favour.

On issue No. 2, they submitted that failure to obtain the consent of the Attorney General of the Federation before

going on with the Garnishee Proceeding, makes the Court not to have jurisdiction, and the application to e incompetent. They refer to **S. 84 of the Sheriff and Civil Process Act** where consent of the Attorney General of the Federation must be obtained first.

That failure to obtain consent in this case makes the Court not to have jurisdiction to entertain the Garnishee Proceeding, and anything decided thereon is a nullity as the condition precedent was not observed and satisfied. They referred to the cases of:

Nigercare Dev. Co. Ltd V. A.S.W.B
(2008) 9 NWLR (Pt. 1093) 498 @ 520

CBN V. Hydro Air PTY Ltd
(2014) LPELR – 22587 Pg. 31 – 32, Paras A – G

That a lower Court is bound by the decision of a higher Court. They referred to the cases of:

Alh. Ibrahim V. Judicial Service Committee of Kaduna State
(1988) 14 NWLR (Pt. 584) 1

CBN V. Zakari
(2018) LPELR – 44751 (CA)

They urged Court to so hold. That obtaining the consent of the Attorney General of the Federation/State is an absolute condition precedent, and failure to do so denies Court its jurisdiction to entertain the Garnishee Proceeding as CBN is a public officer.

They urged Court to resolve the Issue in its favour, and strike out or dismiss the Garnishee Proceeding, holding that consent of Attorney General of the Federation is obligatory and compulsory, and that **S. 84 of the Sheriff and Civil Process Act** must apply.

Upon receipt of the Preliminary Objection the Judgment Creditor filed a Written Address of 290 pages opposing the Preliminary Objection. They raised a sole Issue for determination which is:

“What is the Role of a Garnishee in Garnishee Proceeding before a Court of law?”

They submitted that the role of a Garnishee in a Garnishee Proceeding as this is to show cause why the Order Nisi made should not be made Absolute and the funds of the Judgment Debtor in its custody paid to the Judgment Creditor for the satisfaction of the Judgment debt. That it is not for the Garnishee to query the veracity of the Judgment sought to be executed. That it has no business shielding the money of the Judgment Debtor in its custody no matter how reliable the Judgment Debtor is to the Garnishee. They referred to the case of:

**Oceanic Bank PLC V. Michael Oladepo
(2013) 8 WRN 157 @ 172 Line 20 – 45**

**CBN V. Interstella Comm. Ltd
(2018) 7 NWLR (Pt. 1618) 294 @ 363**

**Guaranty Trust Bank PLC V. Innoson Nig. Ltd
(2017) 16 NWLR (Pt. 1591) 1**

They referred to **S. 83 (1) of the Sheriff and Civil Process Act**. That a Garnishee has no right under the law to stand for and/or play the role of a Defence Attorney to the Judgment Debtor.

That Seven (7) grounds upon which this Preliminary Objection is premised is of no monument.

That the Garnishee misconstrued the law as shown in **S. 287 of the Constitution of the Federal Republic of Nigeria** (as amended) and **S. 6 (1) & 6 of the Constitution of the Federal Republic of Nigeria** (as amended). That by **S. 287 of the Constitution of the Federal Republic of Nigeria** (as amended) the FCT High Court has the right/power to enforce Judgment of the Supreme Court just like the National Industrial Court.

That even in the case of **Central Bank of Nigeria V. Abdullahi Abubakar (2019)** referred to by the Garnishee, that the National Industrial Court took the Preliminary Objection and dismissed same on 16th of February, 2017. They referred to the decision in the Appeal of the case at Court of Appeal.

On whether CBN is a public officer, they submitted extensively citing the case of **Central Bank of Nigeria V. Abdullahi Abubakar supra**. They held that CBN has since abdicated its statutory role assigned to it under the Sheriff and Civil Process Act since the advent of TSA. That there is no justice in allowing a Judgment Creditor to be denied the fruit of its Judgment just because consent of Attorney General of the Federation was not obtained as that

assertion by the Central Bank of Nigeria violates the provisions of **S. 1 (3) & S. 6 (6) of the Constitution of Federal Republic of Nigeria 1999** (as amended). Besides, that the Attorney General of the Federation is one of the Judgment Debtors.

That the Garnishee is not a public officer. He urged Court to dismiss the Preliminary Objection with cost, and make the Order Nisi absolute without delay, following the failure of the Garnishee to show cause as ordered in the Order Nisi.

The Garnishee filed a Reply on Points of Law to the Written Address of the Judgment Creditor. They submitted that Garnishee has no right to challenge the Judgment but has right to dispute its liability as required under **S. 84 of the Sheriff and Civil Process Act** and **Order 8 (1) of the Judgment Enforcement Rules**.

That it is challenging the procedure of the Garnishee Proceeding, and not the Judgment, as issue of jurisdiction is fundamental. They referred to the case of:

**Abraham V. Federal Republic of Nigeria
(2018) LPELR – 44136 (CA)**

That the commencement of the Garnishee Proceeding is inappropriate as proper procedure was not followed.

That the argument of the Judgment Creditor on Issue 1 is misplaced. That Garnishee is a separate Suit from the main Suit which is sought to be enforced.

That the case of **CBN V. Abdullahi Abubakar** cannot stand in this case as it is not similar with the facts in this case because of **Order 8 Rule 2 of the Judgment Enforcement Rules**.

They urged Court to infer from the failure of the Judgment Creditor to address the provision of the said **Order 8 Rule 2 of the Judgment Enforcement Rule**, and resolve the Issue in favour of the Garnishee/Applicant, and discountenance the Judgment Creditor's submission.

On Reply to Issue No. 2, they submitted **S. 84 of the Sheriff and Civil Process Act** has not been repelled, and it is constitutional. They referred to the case of:

**CBN V. Atama
(2019) LPELR – 49194 (CA)**

That consent of Attorney General of the Federation is still compulsory in Garnishee Proceeding when attaching fund in custody of a public officer.

That the Attorney General was sued as a normal party in the main Suit but it did not participate in the transaction. They urged the Court to hold that failure to obtain the consent of Attorney General of the Federation makes the Garnishee Proceeding to be incompetent and the Court to lack jurisdiction to entertain same.

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Having summarized the stands of the parties above, it is the humble view of this Court that the Preliminary

Objection lacks merit as this Court has jurisdiction as a High Court to entertain the Garnishee Proceeding.

Again, this Court holds that the Garnishee – Central Bank of Nigeria is not a public officer, and there is no need to seek and obtain the consent of the Attorney General of the Federation before commencing the Garnishee Proceeding especially as the Garnishee now plays the role of custodian of the money of Federal Government Agencies.

This Court totally aligns and agrees with the submission of the Judgment Creditor in their Written Address challenging the Preliminary Objection.

The Court disagrees, discountenanced, and rejects the submission of the Garnishee/Applicant in this application. There is no merit in the Preliminary Objection, and there is no point repeating the submission of the Judgment Creditor in their Written Address challenging the Preliminary Objection.

There is no point separately seeking and obtaining the consent of the Attorney General of the Federation as the Attorney General of the Federation is a normal party in the Suit. It has all the necessary notification as required by law, and there is no need for any further consent to be sought and obtained.

Since the Garnishee started playing the role after the advent of TSA, they are no longer a public officer.

This Court had stated in the Ruling just delivered that the Garnishee is not a public officer by virtue of **S. 84 of the**

Sheriff and Civil Process Act. Even where it seems to be, consent was sought by making the Attorney General of the Federation a party, and serving it notifications as due. Hence, the consent is not needed before filing and/or instituting the Garnishee Proceeding. So this Court holds.

Again, Garnishee has no right under the law and Constitution and Rules of Court to play the role of Defence Attorney or Counsel for Judgment Debtor. The duty of a Garnishee is to Show Cause whether there is enough fund of Judgment Debtor in its custody to pay off Judgment debt or not. It has no right to play advocate and protector of the money of the Judgment Debtor in its custody in a Garnishee Proceeding. That is why this Court holds that the Preliminary Objection lacks merit, and it is hereby **dismissed.**

This is the Bench Ruling of this Court.

**Delivered today the _____ day of _____ 2025 by
me.**

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.

1ST & 2ND RESPONDENTS' COUNSEL: U.M. NARIMI, ESQ.

3RD RESPONDENT COUNSEL: NOT REPRESENTED.

GARNISHEE COUNSEL: ABDULBASIT ABDULMALIK, ESQ.