

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWAGWALADA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA
BEFORE HIS LORDSHIP: A. S. ADEPOJU
THIS 23RD DAY OF JANUARY, 2024**

SUIT NO: FCT/HC/M/12355/20

BETWEEN:

**CHIBUZO A. ASUZU -----JUDGEMENT CREDITOR/RESPONDENT
AND**

1. ZENITH BANK PLC

2. NIGERIAN POLICE FORCE }-----JUDGEMENT DEBTORS

AND

CENTRAL BANK OF NIGERIA ----- GARNISHEE/APPLICANT

J. A. UKACHUKWU for the Judgement Creditor/Respondent

E. C. CHUKWU for the Garnishee.

RULING

The 2nd garnishee, the Central Bank of Nigeria filed a notice of preliminary objection to the garnishee order nisi issued against it by this Honourable court on 2nd June 2022 on the ground that the said application was made without jurisdiction. The particulars of this objection are:

1. That by virtue of Section 84 of the Sheriffs and Civil Processes Act Cap 56, the Revised Edition Laws of the Federation of Nigeria 2004 where money liable to be attached by garnishee proceeding is in the custody or control of a public officer in his official capacity the order nisi shall not be made unless consent to such attachment is first obtained from the appropriate officer (in this instance the Attorney General of the Federation).

2. Consent of the Attorney General of the Federation was not first sought and obtained before the application for a garnishee order was made by the Judgement Creditor.
3. That by virtue of Section 251(1)(d) of the 1999 Constitution of the Federal Republic of Nigeria and Order VIII Rule 2 of the Judgement Enforcement Rules, the Federal High Court shall to the exclusion of all other courts exercise jurisdiction in civil cases and matters connected with or pertaining to bankers, banks and other financial institution including any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bill of exchange, letters of credit, promissory noted and other fiscal measures.

In the written address in support Counsel to the Garnishee M. B. Aliyu submitted three issues for determination to wit:

1. *Whether by the provision of Section 84 of the Sheriff and Civil Processes Act, the Court can hear this matter against the Garnishee without the consent of the Attorney General of the Federation first sought and obtained before the commencement of the garnishee proceedings.*
2. *whether any banking relationship between the garnishee and the judgement debtor if any obligates or extinguishes the need for the consent of the Attorney General of the Federation in compliance with Section 84 of the Sheriff and Civil Processes Act.*

3. *Whether the Honourable Court being a state High Court can exercise jurisdiction on the garnishee by virtue of Section 251(1)(d) of the 1999 Constitution of FRN and Order VIII Rule 2 of the Judgement Enforcement Procedure Rules.*

With respect to issue 1, the counsel to the garnishee submitted and rightly too on the issue of jurisdiction that it is a threshold issue and must be disposed of as soon as it is raised. Counsel relied on the case of **MAGAJI V MATORI (2000) 8 NWLR (PT. 670) 722** Per **Karibe Whyte JSC** and the case of **MADUKOLU V MADUKOLU**.

On this note, the garnishee contended that before the commencement of garnishee proceeding against the Central the consent of the Attorney General of the Federation must be sought and obtained. The celebrated case of **IBRAHIM V JSC (1998) 14 NWLR (PT.584) 1 @ 38 PAR D** on what the term public officer connotes was stated thus;

“It is thus clear to me that the term public officer has by law been extended to include public department and therefore an artificial person, a public office or a public body.”

That this position was followed by the Court of Appeal in the case **CBN V HYDRO AIR PTY (2014) 16 NWLR (PT. 1434) 482, CBN V OKEFE (2015) LPELR 24825 CA, CBN V KAKURI (2016) LPELR 41468 CA, CBN V IGBADOO & 2 ORS (2017) LPELR 44591 CA, FAYOSE V EFCC (2018) LPELR 46474 CA** delivered on 20/6/18 where the Court of Appeal refused to follow its

decision in **CBN V NJEMANZE (2015) 4 NWLR (PT. 1449) 276** when it decided that the **CBN** was not a public officer.

On the contrary decision of the Court of Appeal, the Garnishee also rightly submitted that the later in time must be followed. The latest decision of the Court of Appeal in the case of **UNITY BANK PLC V IGALA CONSTRUCTION LTD & ANOR (2020) LPELR 49881 CA** decided on 21/8/2020 was also alluded to by the Garnishee. Other authorities relied on by the Garnishee according to their dates of decision are **CBN V PIOUS EFFIONG CA/A/1063/2019** delivered on 18th November 2021, **CBN V BAR, WILLIAMS ANWAN (2021) LPELR 56075 CA** delivered on 3rd December, 2021.

The Garnishee concluded that on the issue of non-compliance with the mandatory statutory provision of Section 84 (1) of the Sherriff and civil Process Act is that such act or order is marooned in a nullity.

With respect to issue 2, the Garnishee's Counsel submitted that any relationship between the Garnishee and the 2nd Judgement Debtor, Nigerian Police if any is only statutory and emanates by virtue of Section 2d, 2e, 27b or 39 of the CBN Act 2007. The Garnishee further reiterated that by virtue of Section 27b or 39 of the CBN Act 2007, the Bank may only open accounts for and accept deposits from the Federal, State and Local Governments and from institutions and cooperation of all such government, banks and other credit or financial institutions in line with 27b of the CBN Act 2007. The Garnishee argued that the statutory relationship created pursuant to Section 27b or 39 of the CBN Act 2007

puts any cause of action pursuant to squarely under purview of the Federal High Court by virtue of Section 251 (1) of the Constitution of the Federal Republic of Nigeria.

In my humble view before it could be said that the Federal High Court have exclusive jurisdiction over a matter, particularly arising from civil cause of action, the subject matter must be exclusively be within the jurisdiction of the Federal High Court as captured or provided for in Section 251 (1) (d) of the 1999 Constitution. This argument of the Garnishee dovetails into Issue 3, wherein the provision of Order VIII Rule 2 of the Judgement Enforcement Rules was also considered before the invocation of this order, the Garnishee proceeding must have arisen out of a cause of action, and in a court which the judgement debtor would have sued the Garnishee. Where in a cause of action both the Federal High Court and the High Court of States have concurrent jurisdiction. The Garnishee proceeding can take place in the court where there is jurisdiction. If the cause of action upon which the garnishee proceeding emanates is within the jurisdiction of the state High Court then it is superfluous for a litigant to run to the Federal High Court to execute such judgement. I think therefore that what the court is to consider is the subject matter of the suit from which the garnishee proceeding emanated rather than give a blanket jurisdiction to the Federal High Court because the judgement debtor and the Garnishee are government agencies. The case of **CBN V IGBALOO Supra**, and the **CBN V KAKIRI Supra** relied on by the Garnishee are authorities for what they decide.

A court with jurisdiction to entertain or determine a case brought before it is also imbued with power to enforce or execute such judgement. Order VIII Rule 2 of the Judgement Enforcement Rules relied on by the Garnishee does not support its position that it is only the Federal High Court that has jurisdiction to entertain the garnishee proceeding in the instant case. This provision of the Judgement Enforcement Rules does not confer jurisdiction on the Federal High Court in garnishee proceedings rather it is guided on enforcement of judgement by the court. See the most recent case of **CBN V ACCESS BANK PLC (2022) LPELR 57000 CA** - per **Owoade JCA** referred to it in earlier and shall form part of the judgement as well.

On this I agree entirely with the submission of the respondent as espoused in their Issue No. 2, that the recovery of money or execution of judgement debt has never been left to the sole jurisdiction of the Federal High Court and that there is no law that denies a court that has delivered its judgement the power or right to enforce its own judgement. The respondent relied on the case of **CBN V EZEANYA & ORS (2022) LPELR R – 57598 CA** to buttress its arguments. I am bound by the bond reasoning of the Court of Appeal Justice Bola JCA, that it preposterous to argue that the state High Courts has no jurisdiction to adjudicate over garnishee proceedings citing Section 251 (1) (d) of the Constitution which has no bearing or relevance to enforcement of judgements or garnishee proceeding. It needs be said that the garnishee proceeding is an enforcement of judgement of court procedure provided by the Judgement Enforcement Rules of the Sheriff and Civil Process Act and the

jurisdiction of all courts to enforce all judgements provided under Section 287 of the Constitution.

I endorse the submission of counsel to the judgement creditor that the High Court of the Federal Capital Territory has jurisdiction to entertain the garnishee proceeding against the Central Bank of Nigeria in the circumstance of this case.

On whether the consent of the Attorney General of the Federation must be sought and obtained, it is almost a notorious fact from all the myriad of cases decided by the Court of Appeal that the Central Bank of Nigeria is a public officer within the context of Section 84 of the Sherriff and Civil Process Act and thus the consent of the Attorney General of the Federation is needed to enforce a judgement vide the garnishee proceeding. However the case of **CBN V INTERSTELLAR COMMUNICATION Supra** which the Judgement creditor relied on in his written address to buttress his submission that the consent of the Attorney General of the Federation is not needed was decided on material facts emerging from the case which are not on all fours with the case at hand and also with some of the decided case that relied on **Interstellar** case as their authority that consent of the Attorney General of the Federation is not needed.

On principle of stare-decisis, the court is bound to follow the decision of the superior courts, however authorities relied on must not be applied across board, but must be clearly distinguished in order to arrive at justice of a matter taking into consideration the peculiarity of each case.

In **INTERSTELLAR Supra**, the Attorney General of the Federation was a debtor, and part of the negotiation in the case, failure of which led to the garnishee proceeding. The Supreme Court per Ogunbiyi JSC held that the consent of the Attorney General of the Federation was not needed in the circumstance. Furthermore the case of **CBN V TRIPPLE C** referred to by the Judgement Creditor was decided based on the fact that the Judgement Debtor, the Federal Capital Territory was deemed to be a state pursuant to Section 299 of the 1999 Constitution of the Federal Republic of Nigeria. The CBN, the garnishee were also described as custodian of money belonging to the judgement debtor the court held:

“What is more, the money in applicant’s custody is not the monies of the appellant or the Federal Government of Nigeria but that of parastatal of Federal Capital Territory which is not an agent of the Federal Government.”

The judgement debtor in the case relied on by the judgement creditor is not an agent of the Federal Government, whose monies is in the custody of the Central Bank of Nigeria. The case of **INTERSTELLER COMMUNICATION Supra** and **CBN V TRIPPLE C ACQUISITION Supra** are not relevant to the case of the judgement creditor. The Nigerian Police force is a public office, a public department and an agent of the Federal Government. The Consent of the Attorney General of the Federation is therefore needed to be sought and obtained before the fund in the custody of the Central Bank of Nigeria is garnishee. The order nisi made in respect of the garnishee, the Central Bank of Nigeria is hereby set aside.

The Order nisi made in respect of the garnishee, Central Bank of Nigeria is hereby set aside.

Sign

**Hon Judge
23/01/2024**