

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 26TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/CV/1830/16

SUIT NO. FCT/HC/M/6936/18

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

**KAZEEM KAYODE USMAN.....JUDGEMENT CREDITOR/
APPLICANT**

AND

**1. DEPARTMENT OF STATE SERVICE }
2. DIRECTOR GENERAL OF THE }.....JUDGEMENT DEBTORS/
DEPARTMENT OF STATE SERVICES } RESPONDENTS**

AND

CENTRAL BANK OF NIGERIAGARNISHEE

RULING

A Garnishee Order Nisi was made in respect of this case on the 17/10/19. On the return date which was 2/12/19, the Garnishee filed a Notice of Preliminary Objection dated 27/11/19. It prays for an order amongst other discharging the Garnishee Order Nisi issued against the Garnishee/Applicant (the Central Bank of Nigeria).

The grounds for its objection are amongst others:

- (1) The Garnishee is an agency of the Federal Government of Nigeria and the condition precedent to instituting Garnishee proceeding against the Federal Government Agency was not complied with.

That it is the Federal High Court that has jurisdiction. The consent of the A. G. was not obtained. That this Court lacks jurisdiction to entertain this suit.

I have also read the Affidavit filed in support and the Garnishee's Affidavit to show cause. The Judgment Creditors Counter Affidavit is of 21 paragraphs filed on the 4th of December, 2019. I have equally read same and considered the Written Address of Counsel. The Garnishee's Notice of Objection is brought pursuant to Section 84 of the Sheriffs & Civil Process Act Cap 56 Laws of the Federation of Nigeria and Section 251 of the 1999 Constitution. Section 84 of the Sheriffs & Civil Process Act States:

“Where money liable to be attached by Garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custodia legis, the order nisi shall not be made under the provisions of the last preceding section unless consent to such attachment is first obtained from the appropriate officer in the case of money in the custody or control of a public officer or of the Court in the case of money in custodia legis as the case may be”.

The issue for determination is whether money held by the Central Bank of Nigeria or on behalf of the Government or any of its agencies is liable to be attached by Garnishee proceedings without the consent of the Attorney General. The Central Bank of Nigeria carries out the functions of a bank by virtue of Section 1(2) and Sections 31 – 41 of the CBN Decree No. 24 of 1991. It is therefore in law and in fact a bank in simple terms. Banking has been variously defined as the business of receiving deposit on accounts, paying and collecting cheques drawn by or paid in by customers, provision of finance or such other businesses of the Governor may by order publish.

In my humble view, the Central bank of Nigeria is a Banker to the Federal Government and its Agencies, States, Local Governments and other banks.

In the circumstance, money in the Central Bank is not money in the hand of a public officer. I agree with Learned Author Afe Babalola SAN in his book “Enforcement of Judgment” at Page 138 that the Central Bank of Nigeria is not and cannot contend to be a public officer who holds a public office in the service of the Federation in respect of money it is holding for Government and its agencies.

In the circumstance, it is not necessary to seek and obtain the consent of the Attorney General. The Garnishee also contends that the Central Bank is a Federal Government Agency and therefore not subject to the jurisdiction of this Court.

Section 251 (1) of the 1999 Constitution states:

“Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdictions as may be conferred upon it by an act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters.

- (a) *relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said government is a party”.*

The Judgment Debtors in this case are the Director of State Security Services and its Director – General. The funds sought to be attached are not revenue of the Federal Government.

Revenue has been defined as the money that a Government receives from taxes or that an organization etc receives from its business, receipt a shortfall in tax revenue.

See Oxford Advanced Learners Dictionary. The Garnishee is not a party to this case. The proceedings in this case ended when judgment was entered against the Judgement Debtors. The simple issue is if the Garnishee has in its custody the funds of the Judgment Debtors.

I have gone through the Affidavit to Show Cause. There is no such denial.

See *CBN VS. DOMA (2018) LPELR 45639*

IN RE DIAMOND BANK LTD (2002) 17 NWLR (PT. 795) 120.

SOKOTO STATE GOVT. VS. KAMDAX NIG. LTD (2004) 9NWLR (PT. 878) P. 345

CBN VS. AMCOM & ORS (2017) LPELR – 42986

In the circumstance of this case, the Garnishee has not been able to show cause why the order shall be made absolute. The Preliminary Objection also lacks merit. It is accordingly dismissed. The Garnishee Order Nisi made on the 17/10/19 is hereby made absolute.

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HON. JUSTICE U.P. KEKEMEKE

(HOH. JUDGE)

26/02/20