

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU - ABUJA**

**ON WEDNESDAY THE 28<sup>TH</sup> DAY OF JANUARY, 2020.**

**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**

**SUIT NO: FJ/03/2019**

**MOTION NO: M/1180/2019**

**BETWEEN**

**MRS. ANI OYONG ASUQUO ----JUDGMENT CREDITOR/APPLICANT**

**AND**

**ORON LOCAL GOVERNMENT AREA COUNCIL -----JUDGMENT**

**DEBTOR**

**IN THE GARNISHEE PROCEEDINGS INVOLVING:**

**THE CENTRAL BANK OF NIGERIA -----GARNISHEES**

**RULING**

The Judgment Creditor/Applicant filed this motion with Motion no. M/1180/2019 brought pursuant to Section 83 (1), 85 and 86 of the Sheriffs and Civil Process Act and Order 46 Rules 1 & 2 of the High Court of the Federal Capital territory (Civil Procedure) Rules. 2018 and under the inherent jurisdiction of this honourable Court, praying the Court for the following Orders:-

1. A garnishee Order Nisi directing the Garnishee/Respondent to attach all the monies due and accruing in or belonging to the Judgment Debtor's accounts (including fixed deposits and/or investments accounts of the judgment Debtors) with the Garnishee Bank from the funds of the Judgment Debtor/Respondent by whatever description known with the Garnishee which accrues or shall in future accrue to the Judgment Debtor's accounts but in the custody and power of the Garnishee to disburse as is sufficient to satisfy the Judgment Creditor/Applicant in this suit in the final

judgment of this Honourable Court (Coram: Hon. Justice Theresa I. Obot) delivered on 21<sup>st</sup> of February, 2019 in the tune of N36,413,806.00 (Thirty Six Million, Four Hundred and Thirteen Thousand, Eight Hundred and Six Naira) together with accrued interest at the rate of 10% per annum from the date of Judgment in suit No HOR/48/2007 in the tune of N 36,474,495.66 (Thirty Six Million, Four Hundred and Seventy Four Thousand, Four Hundred and Ninety Five Thousand Naira, Sixty six kobo) as at 19<sup>th</sup> June, 2019 the sum total of which is N72,888,301.66 (Seventy Two Million, Eight Hundred and Eighty Eight Thousand, Three Hundred and One Naira, Sixty-Six Kobo).

2. An order directing the Garnishee to disclose by affidavit on oath and with statements of account, the sum(s) outstanding in the Judgment Debtor's account(s) with the Garnishee/Respondent however described within 14 days of service of the order of this Honourable Court.
3. An order directing the Garnishee/Respondent to appear before this Honourable Court and show cause why they should not pay to the Judgment Creditor/Applicant the amount of any money or monies or so much thereof as may be sufficient to satisfy the Judgment awarded in favour of the Judgment Creditor/Applicant in the final Judgment of this Court delivered on 21<sup>st</sup> February, 2019 together with accrued interest as at 19<sup>th</sup> June, 2019 which is to the tune of N72,888,301.66 (Seventy Two Million, Eight Hundred and Eight-Eight Thousand, Three Hundred and One Naira, Sixty-Six Kobo Only)
4. And such further or other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the application is an affidavit of 9 paragraphs, deposed to by one Gift Tankipo, a Secretary in the Law firm of O.E.B. Offiong & Co, the law firm representing the Applicant in this suit. Attached to the affidavit are three exhibits; An enrolled order of the High Court of Akwa Ibom State dated 20/4/2009 in suit no: HOR/48/2007 marked Exhibit “EN1”, An enrolled order of the High Court of Akwa Ibom State dated 21/2/2019 in suit no: HOR/MISC 1/2019 marked Exhibit “EN2” and A Certified Copy of Certificate of Judgment of the High Court of Akwa Ibom State dated 27/5/19 marked Exhibit “EN3”.

The Applicant’s Counsel also filed a written address in support of the application, which Counsel adopted as argument.

I have examined the motion and the affidavit in support as well as the exhibits annexed. I have also read the written address and the cases cited therein. In writing this ruling, the issue of whether this Court has jurisdiction to entertain the garnishee proceedings in regard with Central Bank of Nigeria being a party came up.

Jurisdiction for the avoidance of doubt is the Alfa and Omega on the authority of a Court to decide a case, any case. Having said that, it is imperative for the purpose of clarity to state exactly the provisions, **Order V111 Rule 2 Judgment (Enforcement) Rules 2004**, as it relates to the garnishee proceedings; it states:

“Garnishee proceedings may be taken:

- a) In any court, in which the judgment debtor could, under the High Court (Civil Procedure) Rules or under the appropriate section or rule, governing civil procedure in Magistrate’s, Courts, as the case may be, sue the garnishee in respect of the debt; or

b) Where the debt is not yet payable, or is for an amount exceeding the jurisdiction of such court, in any court in which the judgment debtor could have sued the garnishee as aforesaid, if the debt had been immediately payable or had not exceeded the jurisdiction”.

It is trite also, that for garnishee proceedings to be valid, it behoves on the trial Court to ensure that basic conditions set out in the case of **CBN VS. AUTO IMPORT EXPORT & ANOR (2013) 2 NWLR part 1337**, are complied with and in, **National Insurance Commission v. Oyefesobi & Ors (2013) LPELR 20660 (CA)** and the conditions are that:

- a. The garnishee must be indebted to the judgment creditor, within the state, and be resident in the state which the proceedings are to be brought.
- b. The proceedings must be filed in any court which the judgment debtor could, under the High Court (Civil Procedure) rules or under the appropriate section or rule governing civil procedure in Magistrates’ Courts.
- c. The application be made *ex parte*.
- d. The service of the order nisi thereon binds or attaches the debt in the hands of the garnishee.

Garnishee proceedings are governed by the Sheriffs and Civil Process Act, see **UBA V. UBOKULO & ORS (2009) LPELR 8923 CA**. Clearly therefore a garnishee matter can only be initiated in a court where the judgment debtor can sue for the debt; the court has to have jurisdiction to entertain the suit by the judgment debtor against the garnishee in respect of the debt; **CBN v. AUTO IMPORT EXPORT (supra)**; it follows from this that **Section 83(1) of the Sheriff and Civil Process Act** goes hand in hand with **Order V111 Rule 2 of the Judgment Enforcement Rules**.

In the case of **CENTRAL BANK OF NIGERIA v. OKEB NIGERIA LIMITED & ORS (2014) LPELR-23162(CA)** on **JURISDICTION OF HIGH COURT**: Whether it is the High Court of a State or the High Court of the Federal Capital Territory, Abuja that has jurisdiction over a garnishee proceeding where one of the parties to such proceedings involve the Federal Government or any of its agencies. It was held as follows:

*"The trial court in the considered opinion of this court had no jurisdiction to hear the garnishee proceedings in respect of this case; this is so because by reason of section 251 (1) of the Constitution and Order V111 Rule 2 it cannot entertain any suit by the 3rd respondent against the appellant, in respect of the 3rd respondent's money in the appellant's custody; the proper court to hear the proceedings is the Federal High Court; principally because the appellant is an agency of the Federal Government; section 251 (1) of the Constitution is very clear in this regard, as it provides inter alia: "Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction 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 or matter; d) Connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the central Bank of Nigeria arising from banking... provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank" The argument by learned counsel to the respondents that this section of the Constitution did not specifically state anywhere that garnishee proceedings must be*

*initiated at the Federal High Court fails to impress, because the provision is very clear in its intent, even if it is argued it is not so stated specifically; a careful reading of section 251(1), (p), (q), (r) and (s) of the 1999 Constitution and the proviso thereto reveal that the intention of the Lawmakers is to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agencies is a party, A State High Court or the High Court of the Federal Capital Territory, Abuja has no jurisdiction in such matters notwithstanding the nature of the claim in the action." Federal College of Education v Ogbonna (2007) LPELR 9025 CA. It does not matter also in the considered opinion of this court that garnishee proceedings by their nature deal with the enforcement of judgments already obtained; and even if the High Court of the Federal Capital Territory is a creation of the Federal government, as argued by the learned S.A.N for the respondents, the argument still falls flat on its face because that does not by any stretch of imagination mean that the High Court of the Federal Capital Territory is a Federal High Court." Per MUSTAPHA, J.C.A. (Pp. 27-29, paras. G-E)*

The Court of Appeal held in **Federal College of Education Oyo v. Ahinyemi (2007) LPELR 8482-CA**

*"... that the Federal High Court derives its jurisdiction under section 251 of the Constitution of the Federal Republic of Nigeria, 1999. And quite unlike the State High Court which is a Court of unlimited jurisdiction, the Federal High Court is a special circumscribed jurisdiction which is clearly specified under Section 251 of the Constitution. In other words the Federal High Court can only adjudicate on matters mentioned in section 251 of the Constitution where the Federal Government or any of its agencies is a party".*

See **Omosowan v. Chiedozie (1998) 9 NWLR (Pt. 566) 477, Minister of Works & Housing v. Thomas Nigeria Ltd (2002) 2 NWLR (Pt. 752) 740.**

Moreover, Section 84 (1) of the Sheriff and Civil process Act, Cap S 6, 2004 states that

“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 appropriate officer under this context is the Attorney General of the Federation or that of the state as the case may. This is a precondition which must be fulfilled before an order Nisi in the circumstances of this case is acceded to.

It is clear to this Court from the record, without any doubt, that the Garnishee in this case is an agency of the Federal Government and exclusive jurisdiction is vested in the Federal High Court in civil cases and matters arising from the administration, management and control of the Federal Government, the operation and interpretation of the Constitution as affects the Federal Government as well as any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government or any of its agencies. **Section 251(1), (p), (q), (r) and (s) of the 1999 Constitution (as amended).** It is important to note that the proviso to the subsection gives a person the right to seek redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance, where the action is based on any

enactment, law or equity. See **Minister F.M.H. & U. D. V. Bello (2009) 12 NWLR (Pt. 1155) 345 C.A.** moreover, Section 84 (1) (1) of the Sheriff and Civil process Act has to be fulfilled.

Consequently the court is left with no option but to resolve that it lacks jurisdiction to hear this application. Consequently, this application fails and is accordingly struck out for want of jurisdiction.

**Parties:** Absent.

**Appearances:** Genesis Francis for the Judgment Creditor.

**HON. JUSTICE M. OSHO-ADEBIYI**

**JUDGE**

**28<sup>TH</sup> JANUARY, 2020**