

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O.C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 11**

**SUIT NO: FCT/HC/CV/BW/103/2016**

**BETWEEN:**

**DR ALEX AKUNEBU.....JUDGMENT CREDITOR/RESPONDENT**

**AND**

- 1. INSPECTOR GENERAL OF POLICE**
- 2. COMMISSIONER OF POLICE, FCT**
- 3. ACP OLATUNJI DISU, COMMANDER RSS**
- 4. INSP. SHOLA ADENIBA, RAPID RESPONSE SQUAD LAGOS STATE.....JUDGMENT DEBTORS/APPLICANTS**

**AND**

**CENTRAL BANK OF NIGERIA.....1<sup>ST</sup>GARNISHEE/APPLICANT**

**RULING**

By Notice of Preliminary Objection brought pursuant to Section 84 of the Sheriffs and Civil Process Act Cap 86 LFN 2004, Section 251 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and under the inherent jurisdiction of this Hon. Court, 1<sup>st</sup> Garnishee/Applicant pray the court for the following reliefs:-

- (a) An Order setting aside the Garnishee Order Nisi dated 26<sup>th</sup> day of February, 2019 issued by this Hon. Court against the 1<sup>st</sup> garnishee/Applicant.
- (b) An Order discharging the Garnishee Order Nisi against the 1<sup>st</sup> Garnishee/Applicant (central Bank of Nigeria) on the 26<sup>th</sup> day of February 2019.
- (c) An Order striking out the name of the 1<sup>st</sup> Garnishee/Applicant (Central Bank of Nigeria) from the garnishee proceedings.
- (d) And for such further Order or Orders as this Hon. Court may deem fit to make in the circumstance.

The grounds upon which the application is made are as follows:-

- (i) The 1<sup>st</sup> Garnishee/Applicant is an Agency of the Federal Government of Nigeria and the condition precedent to instituting garnishee proceeding against Federal Government Agency was not complied with by the Judgment Creditor/Respondent.
- (ii) The 1<sup>st</sup> Garnishee/Applicant being an Agency of the Federal Government of Nigeria only a Federal High Court has jurisdiction in matters that relates to the Federal Government or any of its agencies.
- (iii) The Judgment Creditor/Respondent did not obtain the consent

of the Hon. Attorney General of the Federation as required by Section 84 of the Sheriffs And Civil Process Act 2004 before commencing the garnishee proceedings against the 1<sup>st</sup> Garnishee/Applicant.

- (iv) The Judgment Creditor/Respondent having failed to comply with the condition precedent by obtaining the consent of the Hon Attorney General of the Federation before instituting the garnishee proceeding against the 1<sup>st</sup> Garnishee/Applicant, the Hon. Court does not have jurisdiction to entertain same.
- (v) Section 251 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) confers exclusive jurisdiction on the Federal High Court on matters that relate to the Federal Government or any of its Agencies.
- (vi) The court proceedings which led to the Garnishee Order made by this Hon. Court on 26<sup>th</sup> February, 2019 offend the Provision of Section 84 of the Sheriffs And Civil process Act Cap 86 LFN 2004 and Section 251 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).
- (vii) This Hon. Court lacks jurisdiction to entertain the proceedings that led to the order made on the 26<sup>th</sup> February, 2019 against the 1<sup>st</sup> Garnishee/Applicant.
- (viii) Order of Court made without jurisdiction is a nullity.

- (ix) This Hon. Court has powers to set aside its judgment given without jurisdiction.

In support of the Preliminary Objection is an affidavit of a Paragraph sworn to be Anthonia Adaba. Also filed a Written Address in support and adopts the said Address, in urging the court to grant the relief sought. Also filed a Reply on Points of Law dated 21/10/19.

In response, Judgment Creditor/Respondent filed a counter-affidavit of 10 Paragraphs deposed to by Anthony Ndanusa. Also filed a Written Address in support and adopts the Address.

In the Written Address of 1<sup>st</sup> Garnishee/Applicant, F.A. Bonire of counsel submitted two (2) issues for determination namely;

- (1) Whether given the fact that the Garnishee/Applicant being an Agency of the Federal Government of Nigeria and the fact that leave or consent of the Hon. Attorney General of the Federation was not obtained by the Judgment Creditor/Respondent before initiating the garnishee proceeding against the 1<sup>st</sup> Garnishee/Applicant.
- (2) Whether given the fact that the garnishee order made on the 26<sup>th</sup> February, 2019 was without jurisdiction this Hon. Court has power to set aside same.

On issue 1, submit given the clear Provision of Section 84 Sheriffs And Civil Process Act and the judicial pronouncements regarding same, this court does not have jurisdiction to entertain this present garnishee

proceeding against 1<sup>st</sup> garnishee/Applicant. That issue of jurisdiction is very fundamental. It's a threshold issue and lifeline for continuing any proceedings, refer the court to Plethora of judicial authorities; UTIL & Ors Vs Onoyivwe & Ors (1991) 1 NWLR PT 166, 166, Cotecna Int'l Vs I.M.B. Ltd (2006) 9 NWLR PT. 985 275 at 297, Inakoju Vs Adeleke (2007) 4 NWLR PT. 1025 423 at 588. That for court to competently exercise jurisdiction in any matter the conditions as laid down by the Apex Court in Madukolu vs Nkemdilim (1962) 2 ANLR 581 at 589 must be fulfilled, that is, it is properly constituted as regards numbers and qualification of members and no member is disqualified for one reason or the other, the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction and the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. That in the instance case, Judgment Creditor/Respondent failed to obtain consent of the Attorney General of the Federation before commencing the Garnishee proceedings against 1<sup>st</sup> garnishee/Applicant as required by Section 84 Sheriffs And Civil Process Act. And having failed to fulfil the condition precedent before commencing the garnishee proceedings, the court lacks jurisdiction to entertain the garnishee proceedings against 1<sup>st</sup>Garnishee/Applicant. Submit 1<sup>st</sup> Garnishee/Applicant being a federal establishment created by Act of Parliament to perform public duties as provided by the Central Bank of Nigeria Act and Banks And other financial institution Act is a public officer requiring consent of the Attorney General of the Federation before garnishee proceedings can be commenced against

it and there is nothing to show Judgment Creditor/Respondent obtain consent of the Attorney General before the Garnishee Order Nisi was made, relied heavily in CBN Vs James Ojembi Okefe (2015) LPELR – 24825 (CA) CBN Vs Amao (2020) 16 NWLR PT 1219, 271, CBN Vs Hydo Air PYT Ltd (2014) 16 NWLR PT 1434, 482, CBN Vs Asset Management Corporation of Nig Ltd & 10 ORS (2017) ALL FWLR PT 900 at 422. Submit Judgment Creditor/Respondent having failed to obtain consent of the Attorney General, before commencing the garnishee proceeding, the entire proceeding is incurably contaminated, commend court to UTC Vs Mcfoy (1961) 3 WLR 1405 at 1409, CBN VCs Alhaji Mohammed Kakuri (2016) LPELR – 41468 (CA).

Further submit the recent decision of the Apex Court in CBN Vs Interstella Communications Ltd (2018) 7 NWLR PT 1618, 294 on issue of consent vis-à-vis issuance of Garnishee Order Nisi must be understand within its context and situated against its own peculiar facts. That the Apex Court made it clear the ratio in the case is not of general application but peculiar to the facts of the case. That the Apex Court in that case did not hold that consent of the Attorney General is no longer required under Section 84 Sheriffs And Civil Process Act where CBN is the garnishee. That there is nothing in the instance case to show Judgment Creditor sought and obtained consent of the Attorney General before instituting garnishee proceedings against 1<sup>st</sup> garnishee/Applicant and this makes the garnishee proceedings a nullity. That court does not and ought not to give Judgment to an incompetent action if the condition precedent to assuming jurisdiction has not been met, and commend court to Madukolu vs Nkemdilim (Supra),

Peter Ayodele Fayose Vs EFCC & Anors Appeal No: CA/IB/30C/2017 delivered by Court of Appeal Ibadan Division on 20<sup>th</sup> June, 2018, Kogi LGC Vs Qumecs (Nig) Ltd (2019) ALL FWLR PT 990, 1370, UBA Plc Vs Access Bank & Anor (2018) LPELR – 44058 (CA).

Also submits the garnishee, CBN, is an agency of the federal government and by virtue of Section 251 of 1999 Constitution (As Amended) any action against the garnishee must be commenced at the Federal High Court and not this court and refer to CBN Vs Auto Import Export (2013) 2 NWLR PT 1337 80 at 133 – 134 Paras G – H, Sunday Gbagbarigha Vs Adikumo Toruemi & Anor (2012) LPELR – 15535 (SC). Submit the Provisions of Section 84 Sheriffs And Civil Process Act and Section 251 of 1999 Constitution (as Amended) are clear and unambiguous and when words used in a statute are clear and unambiguous, they must be interpreted in literal, grammatical or ordinary meaning without sentiment or decoration and court must not read into any enactment words which are not to be found there, refer to UBA Plc Vs Akparabong Community Bank Nig Ltd (20045) 35 WRN, 98, Ogunade Vs Fadayiro (1972) 8 – 9 SC, 1.N.U.R.M. Vs NRC (1996) 6 NWLR PT 473 490 at 503, Osho Vs Phillips (1972) 4 SC 525, Ibrahim Vs Bardo 91996) 9 NWLR PT 474 513 at 577.

On issue 2, adopt their argument on issue 1 and submit this court has power to set aside its judgment given without jurisdiction and commend the court to CBN Vs Alhaji Mohammed Kakuri (Supra), Mark Vs Eke (2004) LPELR – 1841 (SC).

In the final analysis, pray the court to hold that the garnishee proceedings against 1<sup>st</sup> Garnishee/Applicant was conducted without jurisdiction having found to contravened Provisions of Section 84 Sheriffs And Civil Process Act and Section 251 1999 Constitution (as Amended).

In the Written Address of Judgment Creditor/Respondent settled by Anthony Ndanusa two (2) issues was submitted for determination namely:-

- (1) Whether or not the consent of the Attorney General of the Federation ought to have been sought for and obtained by the Judgment Creditor before filing the garnishee application in view of the fact that garnishee is Central Bank of Nigeria.
- (2) Whether or not, by virtue of the Provision of Section 251 of the 1999 Constitution of Nigeria and given the fact that central Bank of Nigeria is the garnishee in this proceedings, Federal High Court and not the FCT High Court has the jurisdiction to hear the garnishee proceeding.

On issue 1, submit its settled that the relationship between CBN and agencies of Govt. is one of banker customer relation and therefore the requirement of consent of the Attorney General under Sheriff And Civil Process Act not applicable as CBN Is not public officer, refer court to Supreme Court decision in CBN Vs Interstella Communications (Supra). Also refer to CBN Vs Njemanze (2015) 4 NWLR PT 1449, 276, Purification techniques Nig Ltd Vs A.G. Lagos State & Ors (2004) ALL FWLR PT 211 1479; FGN Vs Comms Ltd (2005) 9 NWLR PT 1463, 1.



On the argument of Garnishee/Applicant that the reason the Apex Court upheld the Garnishee Order Nisi against CBN in Interstella case was because the Attorney general was a party in the case, submit Garnishee/Applicant misunderstood and largely misconstrue the crux of the Judgment. That the issue of the Attorney General been a party in that case came up as an aside or a ratio to the main dictum of Per Ogunbiyi JSC. That the issue of the Attorney General being party to the proceeding in Interstella case was just part of several issues the court settled and does not in any way expressed the entire decision of the court regarding the interpretation of Section 84 Sheriffs and Civil process Act. That the decision in Interstella case is a holistic decision and has now received judicial affirmative in the recent case of CBN Vs Doma (2018) LPELR – 44062 (CA).

On issue 2, submit this Suit being one of enforcement of judgment and the judgment having emanated from this court, this court has jurisdiction to entertain same and refer to A G Lagos State Vs Dosunmu (1989) 3 NWLR PT 111, 522 on what qualified and constitute jurisdiction of court. Further that jurisdiction of court are conferred by the constitution and to determination whether a court has jurisdiction, it is the Section of the Constitution vesting them with jurisdiction that is to be examine and commend court to Section 257 and 251 of the Constitution and case of John Shey Int'l Ltd Vs FHA (2016) 14 NWLR PT 1533 427 at 446.

Submit garnishee proceedings is an aspect of enforcement of judgment and its governed by Section 287 of the Constitution which is superior to Enforcement Procedure Rules and CBN which is Garnishee/Applicant cannot

validly raise issue of jurisdiction in view of Section 287 of the Constitution. That its assertion that because it is a federal government establishment, this court has no jurisdiction to entertain the garnishee proceeding against it manifestly wrong, vexatious and attempt not only to mislead court but also deny Judgment Creditor benefit of the Judgment, commend court to several judicial authorities; FBN Vs Uwadi (2004) 10 NWLR PT 882, 626, John Shoy Int'l Ltd Vs FHA (Supra), Wema Securities and Finance Plc Vs Nigeria Agricultural Insurance 63 NSCQR, 510.

In its Reply on Points of Law, 1<sup>st</sup> Garnishee/Applicant submit argument of Judgment Creditor/Respondent that he does not require consent of Attorney General before attaching fund of Judgment Debtors in custody of Garnishee/Applicant in puerile, mischievous and total misapplication of the decision in CBN Vs Interstella Communications relied upon by Judgment Creditor/Respondent. That in the instant case, the Attorney General, unlike in CBN Vs Intrastella Communications case, ie neither a party nor Judgment Debtor to bring this case under judicial interpretation delivered by the court in CBN Vs Interstella Communications case. That there is nothing to show Judgment Creditor/respondent sought and obtain consent of the Attorney General before instituting the garnishee proceedings and this makes it a nullity. Refer to UBVA Plc Vs Access Bank & ANOR (2018) LPELR – 44058 (CA), Onjewu Vs Kogi State Ministry of Commerce & Industry (2003) 10 NWLR PT 827, 40, Ode & Ors vs Benue State Govt. (2011) LPELR – 4774, Jaiz Bank Plc Vs Unity Bank Plc & Ors (Unreported) Appeal No. CA/5/58/15.

On the argument that garnishee proceeding is not a Suit and garnishee cannot validly raise issue of jurisdiction in view of Section 287 of the Constitution, submit garnishee proceeding is a distinct Suit initiated via exparte application and if on the face it, its clear court does not have jurisdiction, it can suo moto decline jurisdiction.

I have taken insightful consideration of the submission of both counsel for and against the grant of this application as well as the judicial authorities cited and relied upon and find that only one (1) issue can be distilled for determination in this application and that is;

“Whether or not the 1<sup>st</sup> garnishee/Applicant has established a case to entitle it to the relief sought”

The issues in contest by 1<sup>st</sup> Garnishee/Applicant are of two folds. First that the garnishee proceeding instituted by Judgment Creditor/Respondent is incurably contaminated and a nullity having failed to comply with the Provisions of Section 84 of Sheriffs And Civil process act which required consent of the Attorney General to be sought and obtained before commencing garnishee proceedings and that this being the case, this court lacks the jurisdiction to entertain the garnishee proceedings instituted by Judgment Creditor/Respondent. Secondly, that 1<sup>st</sup> Garnishee/Applicant being a Federal Government Agency, this garnishee proceedings ought commenced at the Federal High Court in line with the Provisions of Section 251 of the 1999 Constitution (As Amended) and not the FCT High Court as has been done by Judgment Creditor/Respondent in the instant and as such this court has no jurisdiction and the garnishee order made by court

on 26<sup>th</sup> February, 2019 against 1<sup>st</sup> Garnishee/Applicant was without jurisdiction.

Judgment Creditor/Respondent, on the other hand, had contended that the requirement of consent of the Attorney General under Sheriffs And Civil Process Act Is not applicable as 1<sup>st</sup> Garnishee/Applicant (CBN) Is not a public officer. On the issue that the garnishee proceedings ought to be commenced at the Federal High Court in line with the Provisions of Section 251 of the 1999 Constitution because 1<sup>st</sup> Garnishee/Applicant (CBN) is Federal Government Agency, contend that the Suit being one of enforcement of judgment and the judgment having emanated from this Court, the court has jurisdiction to entertain the garnishee proceedings.

Section 84 (1) of Sheriff And Civil process Act provides;

“Where money liable to be attached by garnishee proceedings is in custody or under the control of a public officer in his official capacity or in custodian 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 custodian legis as the case may be ”

The Sheriffs And Civil Process Act did not define who or what is a public officer. I shall, however, have recourse to the definition as given by the Interpretation Act. Section 18 (1) of the Interpretation Act defines public officer to mean member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or of the

public service of a state. See also Section 318 of the 1999 Constitution (As Amended). Going by this definition, it is not in contention that 1<sup>st</sup> Garnishee/Applicant herein is a public officer. This has even been given judicial affirmation. See the Supreme Court case of Ibrahim Vs JSC (1998) 14 NWLR PT 584, 1 See also CBN Vs Hydro Air PYT Ltd (2014) 16b NWLR PT 1434, 482. Therefore, the argument by Judgment Creditor/Respondent that 1<sup>st</sup> Garnishee/Applicant (CBN) is not a public officer is untenable. This having been said, the issue that is of paramount consideration is whether Section 84 of Sheriffs And Civil Process Act reproduced above is applicable to cases of garnishee proceedings. In other words, can 1<sup>st</sup> Garnishee/Applicant herein (CBN) be regarded as public officer for purposes of garnishee proceedings requiring consent of the Attorney General of the Federation in line with Section 84 of Sheriffs And Civil Process Act before garnishee proceedings can be competently instituted or commenced? My answer to this poser is a clear NO. I say No because the law is settled that in garnishee proceedings, as in the instant, 1<sup>st</sup>Garnishee/Applicant (CBN) is not public officer in the context of Section 84 of Sheriffs And Civil Process Act requiring consent of the Attorney General of the Federation before a garnishee proceedings can be competently instituted or commenced and there are Plethora of judicial authorities in affirmative of this position. See the case of Purification Techniques Nig Ltd Vs AG, Lagos State (2004) ALL FWLR PT 211, 1479. See also CBN Vs Njemanze (2015) 4 NWLR PT 1449, 276. The Supreme Court in the recent case of CBN Vs Interstella Communications (Supra) emphasized this position of the law when it held that in garnishee

proceedings, as in the instant 1<sup>st</sup>Garnishee/Applicant(CBN) is not a public officer in the context of Section 84 Sheriffs And Civil Process Act and therefore the requirement of consent of the Attorney General is not required to institute or commence garnisheeing proceedings to attach funds in its custody. The Apex Court went on to state that it would be absurd and contrary to natural justice to require a Judgment Creator to first obtain consent of Judgment Debtor before proceeding against him to recover his money. That this could not have been the intention of the Legislature that Section 84 of the Sheriffs And Civil Process Act be used as shield by a Judgment debtor to evade debt owed by requiring consent of the debtor itself before proceeding against him to recover a debt. In this instant case, the 1<sup>st</sup> Garnishee/Applicant (CBN) though regarded as public officer in law and within the context of Section 84 of the Sheriffs And Civil Process Act, it is not so regarded for the purpose of garnishee proceedings as to require the consent of the Attorney General of the Federation before a Garnishee proceedings can be instituted or commenced. In other words, Section 84 of the Sheriffs And Civil Process Act requiring the consent of the Attorney General before a garnishee proceedings can be instituted or commenced is inapplicable in cases of garnishee proceedings. See CBN Vs Interstella Communications Ltd (Supra). See also the more recent case of Court of Appeal on this issue in CBN Vs Doma(2018) LPELR – 45639 (CA) which is in all fours with this instant case. Therefore, the contention of 1<sup>st</sup>Garnishee/Applicant (CBN) is a total misapplication, misconception and of the understanding and interpretation of Section 84 of the Sheriffs And Civil Process Act.

On the issue that the garnishee proceedings contravenes Section 251 of the 1999 Constitution (As Amended) because 1<sup>st</sup> Garnishee/Applicant (CBN) is a Federal Government Agency and as such the garnishee proceedings ought to be commenced or instituted at the Federal High Court not the FCT High Court as Judgment Creditor/Respondent has done and therefore this court lacks jurisdiction to determine this garnishee proceedings and the Order Nisi made by this court on 26<sup>th</sup> February, 2019 was without jurisdiction. Again, this submission by learned counsel is untenable and misconceived. First, the 1<sup>st</sup> Garnishee/Applicant is not party to the Suit and this court is one of enforcement of judgment of this Court which emanated from the court itself and it is law that all courts, including the FCT High Court, shall exercise jurisdiction in respect of garnishee proceedings. See Section 287 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended). Therefore, the garnishee proceeding does not in any way violate the Provisions of Section 251 of the 1999 Constitution as canvassed by 1<sup>st</sup> Garnishee/Applicant.

From all of these, it is the findings of court that this Preliminary Objection filed by 1<sup>st</sup> Garnishee/Applicant (CBN) lacks merit and it is hereby dismissed.

Consequently, the Order Nisi made by Court on 26<sup>th</sup> of February, 2019 is hereby made absolute. I so order.

I made no orders as to cost.

**HON. JUSTICE O.C. AGBAZA**

Judge

10/6/2020

A.M.A. ADJUMOBI WITH F.A. BONIRE FOR THE 1<sup>ST</sup>  
GARNISHEE/APPLICANT

DR ALEX AKUNEBU WITH GODSON USANG, ANTHONY NDANUSA, JOY  
UKADO – FOR JUDGMENT CREDITOR/RESPONDENT