

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 22**  
**CASE NUMBER : SUIT NO: CV/2129/14**  
**DATE: WENSDAY 9<sup>TH</sup> DECEMBER, 2020**

**BETWEEN**

**1.RIOK NIGERIA LIMITED ..... JUDGMENT CREDITOR**  
**2.XINIGERIALIMITED ..... JUDGMENT CREDITOR/  
APPLICANT**  
**3.SNECOU GROUP OF COMPANIES LTD}JUDGMENTCREDITOR**

**AND**

**INCORPORATED TRUSTEES OF ASSOCIATION  
OF LOCAL GOVERNMENT OF NIGERIA } JUDGMENT/  
(ALSO KNOWN AS ASSOCIATION OF } DEBTOR  
LOCAL GOVERNMENTS OF NIGERIA (ALGON)}**

**IN RE:-CENTRAL BANK OF NIGERIA (CBN).....GARNISHEE**

## **RULING**

The Judgment Creditor/Applicant approached this Honourable Court for an Order of Garnishee Order Nisi as in Form 26 of the Sheriffs and Civil Process Act against the Garnishee herein attaching the sum of **\$154,621,856,298 (One Hundred Fifty – Four Million, Six Hundred and Twenty-One Thousand, Eight Hundred and Fifty-Four United State Dollars Two Hundred and Ninety Eight Cent.**

The Honourable Court after listening to the Applicant grant an Order Nisi on the 28<sup>th</sup> October, 2020 and the 18<sup>th</sup> day of November, 2020 was fixed for Garnishee to show cause.

Upon service, the Garnishee/Applicant filed a Notice of Preliminary Objection challenging the Procedural

and substantive jurisdiction of this Honourable Court to entertain this Garnishee Proceeding.

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

1. This Honourable Court lacks the substantive jurisdiction to entertain the instant Garnishee Proceeding, by virtue of Section 251 of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended). The substantive jurisdiction to hear and entertain the instant Garnishee/Applicant is vested only in the Federal High Court.
2. The Judgment Creditor/Respondent did not obtain the requisite consent of the Attorney General of the Federation Pursuant to Section 84 of the Sheriff and Civil Process Act.

3. The Judgment Debtor/Respondent Incorporated Trustees of Association of Local Governments of Nigeria (ALGON) does not operate an account with the Garnishee/Applicant.
4. The application, upon which the Garnishee Order Nisi was obtained was based on speculation.
5. The instant Garnishee Proceeding is incompetent and the Order Nisi made on 28<sup>th</sup> October, 2020 is null and void, having been concluded without jurisdiction. This Court lacks the requisite jurisdiction to entertain or further conduct proceedings in this matter.

In support of the application is an affidavit of 16 paragraphs duly deposed to by One Nuraen Oloyede, a

Legal Practitioner in the Law Firm of Garnishee/  
Applicant.

It is the deposition of the Applicant that the Judgment Debtor/Respondent, Incorporated Trustees of Association of Local Government of Nigeria (ALGON) does not operate an account with the Garnishee/Applicant, and that same is an agency of the Federal Government of Nigeria, and therefore it is the Federal High Court and not FCT High Court that has the jurisdiction competence to entertain the matter. Learned counsel cited section 251 (1) of 1999 Constitution.

Applicant avers further that the consent of the Attorney General of the Federation was not obtained and that Judgment Creditor/Respondent failed to

expressly state the specific bank account numbers of the Judgment Debtor /Respondent.

A written address was filed wherein Learned Counsel argued the grounds of objection.

On ground one, that *this Honourable Court lacks the substantive jurisdiction to entertain the instant Garnishee Proceeding, by virtue of Section 251 of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended). The substantive jurisdiction to hear and entertain the instant Garnishee/Applicant is vested only in the Federal High Court.*

Learned Counsel contended that this Honourable Court is not clothed with the requisite jurisdiction to entertain the instant garnishee proceeding, having

regards to the provisions of Section 251(1)(d) of the 1999 Constitution (as amended).

Counsel argued further that from the above provision, the only Court vested with jurisdiction over an agency of the Federal Government is the Federal High Court ***CBN VS AUTO IMPORT EXPORT (2013)2 NWLR (Pt. 1337) Page 80 at Pages. 133 – 134.***

On ground two, i.e. that ***the Judgment Creditor/Respondent did not obtain the requisite consent of the Attorney General of the Federation Pursuant to Section 84 of the Sheriff and Civil Process Act, learned senior counsel*** argued that the Garnishee/Applicant being a Public Officer within the context of Section 84 of the Sheriffs and Civil Process Act, the prior consent of the Attorney

General of the Federation is required before any money in the custody of a Public Officer may be garnisheed.

***CBN VS KAKURI (2016) LPELR 41468.***

Learned Counsel contended further that Courts are bound to enforce the mandatory provision of a substantive law including the Constitution. It is the duty of all Courts to give effect to legislation.

***MAKO VS UMOH (2010) 8 NWLR (Pt. 1195) P. 82 at Pp. 107 – 108.***

Grounds three and four were argued conjunctively, ***i.e the Judgment Debtor/Respondent Incorporated Trustees of Association of Local Governments of Nigeria (ALGON) does not operate an account with the Garnishee/Applicant and that the***



*application, upon which the Garnishee Order Nisi was obtained is based on speculation.*

Learned SAN, Ahmed Raji for the Applicant argued that Garnishee/Applicant adduced cogent and verifiable reasons, and has clearly demonstrated vide the depositions in the affidavit in support of the instant application that it will be unable to give effect to the Order Nisi of this court made on the 28<sup>th</sup> day of October, 2020 because Judgment Debtor does not maintain account with the Garnishee.

Court on the whole was urged to decline jurisdiction in the interest of justice.

Upon service, the Judgment Creditor/Applicant filed a counter affidavit of 5 paragraph deposed to by One Mohammed Bale Yushua, a Litigation Secretary in the Law Firm of the Counsel to the Applicant.

It is the position of the Judgment Creditor/Applicant's counsel that the Garnishee is not a Public Officer within the contemplation of Section 84 of the Sheriffs and Civil Process Act and as such, the Judgment Creditor/Applicant requires no consent of the Attorney General of the Federation for the monies in the custody of the Garnishee to be attached to satisfy the Judgment debt in this suit, and that the Constitution of the Federal Republic of Nigeria 1999 (as amended) does not govern the enforcement of Judgment obtained in the regular Courts established under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Judgment Creditor/Applicant further averred that the Judgment sum mentioned in the said Court Order, being the Judgment sum in **Suit**

**No.:FHC/ABJ/CS/130/13 BETWEEN LINAS INTERNATIONAL LTD. & 235 ORS VS. THE FEDERAL GOVERNMENT OF NIGERIA & ORS.**, is the Judgment sum from which payment to the Judgment Creditor/Applicant is tied to, and same is warehoused in the Central Bank of Nigeria (CBN) for disbursement to the beneficiaries including the Judgment Debtor herein. The said Judgment Order made on the 27<sup>th</sup> of June, 2016 is attached and marked as Exhibit 'A'.

That all issues raised in the garnishee's Preliminary Objection were equally raised by the same Garnishee in **Suit No: CV/1545/2015 BETWEEN DR. TED ISEGHOHI-EDWARDS VS. INCORPORATED TRUSTEES OF ASSOCIATION OF LOCAL GOVERNMENT OF NIGERIA (ALGON) AND CENTRAL BANK OF NIGERIA**

(CBN) before FCT High Court, Coram: Hussein Baba Yusuf J. and settled by that Court in a Ruling which is hereby attached and marked Exhibit 'B', and that the Federal Government of Nigeria has commenced releasing of the monies involved in the Garnishing Proceedings before the Federal High Court as per the Order Absolute of 27<sup>th</sup> June, 2016 and if the money is released and disbursed completely the Judgment Creditor herein will have nothing to fall back to.

A written address was filed wherein Learned Senior Counsel responded to the argument canvassed by the Learned Counsel for the Judgment Debtor/Applicant, Raji, SAN.

On ground one, i.e Section 251 of the Constitution, Learned Counsel argued that the above Section is

not applicable to the instant proceeding as there is clear distinction between execution of Judgments and other method of enforcing Judgment such as Garnishee proceedings.

The authority of ***PURIFICATION TECHNIQUE LTD. VS ATTORNEY GENERAL OF LAGOS STATE (2004) ALL FWLR (Pt. 211)***. Was cited in support of the preposition.

On issue two, it is the submission of Counsel that Section 84 of the Sheriffs and Civil Process Act relied upon by the Applicant is not correct as the Garnishee is not a public Officer as envisaged in the above section.

Leaned Senior counsel, Limon SAN, cited ***ONJEWU VS KOGI STATE MINISTRY OF COMMERCE & INDUSTRIES (2003) 10 NWLR***

*(Pt. 827) 40.*In support of the preposition in urging the court to dismiss the application in the overriding interest of justice.

Upon service, Garnishee filed a further affidavit of 9 paragraph wherein the Garnishee stated that the Garnishee does not maintain any account in the name of the Incorporated Trustee of Association of Local Government of Nigeria.

That the Judgment Creditors/Respondents are not parties to the Suit No.: **FHC/ABJ/CS/A30/13 BETWEEN LINAS INTERNATIONAL LTD. & 235 ORS VS THE FEDERAL GOVERNMENT OF NIGERIA & ORS.**

A written address was filed wherein learned counsel urged the court to decline jurisdiction.

**Court:-** I have gone through the Notice of Preliminary Objection with the affidavit in support filed by the Judgment Debtor/Applicant and the written address in support of same. I have equally gone through the counter affidavit filed by the Judgment Creditor/Applicant and the written address therein.

I have equally considered the further and better affidavit filed by the Garnishee/Applicant.

I shall be brief but succinct in addressing the issues canvassed in the said Notice of Preliminary Objection in the interest of justice and fairplay.

From the Notice of Preliminary Objection, it's clear that the objection of the Judgment Debtor/Applicant is founded on three issues to wit;

- a. That Association of Local Government of Nigeria (ALGON) has no account with the Central Bank of Nigeria (CBN)*
- b. That by virtue of Section 251 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) only the Federal High Court has exclusive jurisdiction over affairs respecting the Central Bank of Nigeria (CBN).*
- c. By virtue of the Sheriffs & Civil Process Act, the Central Bank of Nigeria (CBN) being a Public Officer cannot be compelled to expend money by way of payment of Judgment debt without the consent of the Attorney General of the Federal first had and obtained.*

I have read the various affidavit of the parties and the written addresses in support of the affidavit,



indeed, the garnishee's first argument is that the Judgment Debtor (Association of Local Government of Nigeria (ALGON) has no account with the Central Bank of Nigeria (CBN).

Whereas the Judgment Creditor/Respondent had stated in paragraph 4(j) of counter affidavit as thus;

***“That the Federal High Court, Abuja Division Coram A.F.A Ademola .J., had by an Order Absolute made on the 27<sup>th</sup> June, 2016 in the garnishing proceedings in Suit No. FHC/ABJ/CS/130/13 made an Order which among other Orders states as follows that Garnishee (CBN) shall pay over the Judgment debt of \$3, 188, 078, 505.96 (Three Billion, One Hundred and Eighty – Eight Million, Seventy Eight Thousand Five Hundred and***

*Five Dollars, Ninety Six Cents) to the Local Government in Nigeria to be warehoused in the Central Bank for disbursement to the beneficiaries”.*

Above facts deposed to in the affidavit has not been contradicted by the Judgment Debtor/Applicant and therefore Court must act on same.

Indeed, when an affidavit is filed deposing to certain facts and the other party does not file a counter affidavit, the facts deposed to in the affidavit would be deemed unchallenged and undisputed. Moreso that no documents has been placed before the Court showing that the decision quoted above has been set aside by any High Court.

For above reason therefore, I resolve issue one in favour of the Judgment Creditor/Respondent.

Issue No. 2 is based on the Section 251(1) of the 1999 Constitution (as amended) as it relates to the Central Bank of Nigeria being an agency of the Federal Government in this context.

My attention has been drawn to Exhibit ‘B’ which is a ruling delivered by my Learned Brother **Hon. Justice Hussein Baba Yusuf**. Wherein he dismissed similar application brought by the Judgment Debtor/Applicant.

For avoidance of doubt, paragraph 2 in pages 4 of Exhibit ‘B’ read as thus;

*“In my view, reference to Section 251 of the 1999 Constitution as it relates to the Central Bank of Nigeria (The Garnishee/Applicant) being an agency of the Federal Government in this context is grossly misplaced. When money*

*is held or kept by the Central Bank of Nigeria on behalf of any entity it is to be seen as a banker-customer relationship. In other words, the relationship is purely commercial and contractual in nature and would not admit of the invocation of the provision of Section 251 of the Constitution. See the case of PURIFICATION TECHNIQUE (NIG) LTD. VS A.G., LAGOS STATE (2004)9 NWLR (Pt. 879) 665 where the Court of Appeal held as follows:-*

*There is absolutely no basis for treating government bank accounts any differently from bank accounts of every other juristic personality or customers. The relationship of a banker to a customer is contractual. It is*

*essentially that of a Debtor to a Creditor in the case of credit balance”.*

Above decision was handed down by my brother, Yusuf Baba, J. of this very court. I must state that the facts and circumstances of the decision are on all force with the present matter and situation.

Being a persuasive decision that was not arrived at per – incuram, I have no difficulty following the same direction which I am certain is the right position of the law.

I shall so dismiss the instant argument on this note..same is dismissed.

Issue of consent of the Attorney General of the Federation is next.Indeed this issue again has been adequately dealt with by my Learned Brother Hon.

**Justice Hussein Baba Yusuf .J.** in Exhibit ‘B’ to the counter affidavit.

For avoidance of doubt, my Brother held in paragraph 2 of page 5 of Exhibit ‘B’ as thus;

*“Closely connected with this point is the argument that the consent of the Honourable Attorney-General of the Federation ought to be obtained before this proceeding can be pursued against the Garnishee. This argument according to Learned Senior Counsel is anchored on the provision of Section 84 of the Sheriff and Civil Processes Act. In my view, this argument is outdated as Courts have held in a long line of decisions that the provision is an attempt to subjugate the jurisdiction of the*

***Court to the office of the Honourable Attorney-General of the Federation.”***

From above, it is clear that the arguments of Garnishee/Applicant has been certified death after desperate effort to save same from the earlier suffocating argument that caused its life before Yusuf Baba, J. were taken.

Preliminary Objection is liable to be dismissed. Same is hereby dismissed for the advanced reasons.

Next to be considered is the affidavit to show cause which was filed in obedience to Garnishee Proceedings.

Order ‘Nisi’, which is a French words that means “unless” was made against the Garnishee and served on them on the 29<sup>th</sup> October, 2020 for them to show

cause why same shall not be made absolute against them.

I have considered the said affidavit to show cause filed by the Garnishee (CBN). I dare say that it is not the place of a named Garnishee to profer arguments on behalf of a named Judgment Debtor other than to state in its affidavit to show cause whether or not it does have money belonging to a Judgment Debtor in its custody. Other than trying to shield Judgment Debtor, Garnishee (CBN) has not said anything legally convincing to persuade this court from making the initial Order Nisi, Absolute, and since my duty only is to either discharge a named Garnishee or make Order Nisi, Absolute, upon going through affidavit to show cause which is done by filing affidavit, and having gone through the said affidavit to show cause, filed by the Garnishee, I am satisfied



that Garnishee has not shown any cause why the earlier Order Nisi shall not be made absolute.

On the authority of *UBN PLC. VS BONNY MARCUS (2005) 7 SC (Pt. 11) 70*, the Order Nisi made against the Garnishee (CBN) on 28<sup>th</sup> October, 2020 is hereby made absolute.

*Justice Y. Halilu*  
*Hon. Judge*  
*9<sup>th</sup> December, 2020*

**APPEARANCE**

**DR. HASSAN LIMAN, SAN with IDRIS M.T and MAIMUNA A. ABUBAKAR** – for the Judgment Creditor/Applicant/Respondent.

**DEBORAH O. with OLOLADE ALIYU** – for the Garnishee/Applicant.