

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO

ON THE 24TH NOVEMBER, 2020

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT\HC\CV\1906\13

BETWEEN:

1. MR. CHRIS UMEH

(Trading under the names of Ozotech

Computers Enterprises

Liliteck Nigerian Enterprises, Umehtech

Computers Enterprises

Softech Global Resources Enterprises and

Chrislink Systems Enterprises)

2. MR. OBINNA NWACHUKWU

(Trading under the name of Obluto Enterprises)

3. MR. GODWIN OKWU

(Trading under the name of Winoch Enterprises)

4. SAIDU' MOHAMMED MAAJI

(Trading under the name of Sa'ad (Nigeria) Enterprises)

5. CAROLINE NZE

(Trading under the name of Emmacaro Ventures)

6. OBINNA CHAMBERLAIN

(Trading under the name of Ossy-Wele Enterprises)

7. CHINEDU ONWUZURIKE

(Trading under the name of Zarika Ventures)

8. CHIMAOBI EZENDEBUWA

(Trading under the name of Wilkenstev Associates)

9. HARI JH INTEGRATED LIMITED

10. AFAMEK MULTI COMPUTER LIMITED

**Judgment Creditors/
Respondents**

AND

NATIONAL BOUNDARY COMMISSION ... JUDGMENT DEBTOR/RESPONDENT

AND

CENTRAL BANK OF NIGERIA GARNISHEE/APPLICANT

I. MUSA FOR THE JUDGMENT CREDITORS/APPLICANTS.

K.G TERHEMEN FOR THE JUDGMENT DEBTOR.

A.A. IBIKUNLE – AMOPETU MRS FOR THE GARNISHEE.

RULING

By a Notice of Preliminary Objection filed on 26th November 2018, the Central Bank of Nigeria the garnishee/applicant, seeks to set aside the order nisi made by this Honourable Court on the 31st day of October 2018 for want of jurisdiction.

The ground for the objection is that the Federal High Court has exclusive jurisdiction over any action by or against the Central Bank of Nigeria.

The objection was supported by a 4 paragraph affidavit of John Danjuma and a further affidavit of 20 paragraphs deposed to by Aaron Ocholi filed on 25th September 2019.

Also filed on 26th November 2018 was a written address wherein at page 17 – 22 thereof, learned counsel A. A Ibikunle-Amopetu Esq. argued that a garnishee proceeding must be instituted in a court where the judgment creditor could have competently sued the garnishee. Placing reliance on S. 251 (1) (d) of the 1999 Constitution; Order VIII Rule 2 of the Judgment (Enforcement) Rule and **CBN V OKEB NIGERIA LTD & 2 ORS (2014) LPELR – 23162 CA**; it was submitted that the Federal High court has exclusive jurisdiction in any action by or against the garnishee.

It was further submitted that jurisdiction is so fundamental that it can be raised at any stage of proceedings. See **PETROJESSICA ENTERPRISES LTD V LEVENTIS TRADING COMPANY LTD (1992) 5 NWLR 675 at 693 paragraph E – H**. The court was urged to hold that it lacks jurisdiction and set aside the order nisi made on 31st October 2018.

I. Musa Esq. for the judgment creditor, in opposition to the objection adopted their written address filed on 11th March 2019.

Specifically on issue two thereof learned counsel submitted that to determine whether it has jurisdiction to entertain a matter, the court is to consider the nature of the plaintiff's claim as disclosed in the writ of summons, citing **ONUORAH V K.R.P.C LTD (2005) 6 NWLR (PART 921) 393 at 404 paragraph E**.

He urged that the relationship between the garnishee and the judgment debtor is that of banker/customer relationship. That under S. 251 (1) (d) of the constitution cited by the garnishee, the relationship between the garnishee and the judgment debtor is a simple contract for which the Federal Capital Territory, Abuja is vested with jurisdiction.

It was further argued that the law has since changed citing the Supreme Court authority of **CBN V INTERSTELLA COMMUNICATIONS LTD (2018) 7 NWLR (PT 1618) page 294 at 346 paragraph B-E**.

Finally, it was submitted that the garnishee has no legal right to ambush and attack the judgment of the honourable court which is functus officio to revisit the statement of claim.

He urged that the preliminary objection be struck out and the order nisi made absolute against the garnishee.

Ibikunle-Amopetu Esq. adopted her reply on point of law filed on 25th September 2019 wherein she submitted that **CBN V INTERSTELLA (supra)** is sui

generis and not applicable in this situation. She urged the court to hold that it has no jurisdiction to entertain these garnishee proceedings.

I have considered the objection and arguments of both sides thereon. No doubt jurisdiction is a fundamental issue and goes to the root of any proceedings before the court. It is trite law that so fundamental is the issue of jurisdiction that it can be raised at any time in the course of proceedings by any party and even for the first time, on appeal. And whenever raised, it must be decided one way or the other before proceedings continue.

The issue before this court is whether the High Court of the Federal Capital Territory has jurisdiction to entertain garnishee proceedings against the Central Bank of Nigeria, the garnishee in this case.

I have read the authorities relied upon by the garnishee in her contention that this court lacks jurisdiction to entertain these garnishee proceedings i.e **CBN V OKEB NIGERIA LTD & 2 ORS (supra)** which is on all fours with these garnishee proceedings.

Therein the garnishee/appellant - Central Bank of Nigeria sought an order setting aside the garnishee order nisi made by the High Court of the Federal Capital Territory on the 20th of May, 2013 against them. The respondents opposed the application.

After hearing arguments on both sides the trial court dismissed the application.

The matter proceeded on appeal where S.251 (1) (d) of the 1999 Constitution and Order VIII Rule 2 Judgment (Enforcement) Rules were considered. The court held that clearly a garnishee matter can only be initiated in a court where the judgment debtor can sue for the debt, that is, that the court has to have jurisdiction to entertain the suit by the judgment debtor against the garnishee in respect of the debt.

It thus held that the trial court has no jurisdiction to hear the garnishee proceedings in respect of that case because by reason of S 251(1) of the Constitution and Order VIII Rule 2, the trial court cannot entertain any suit by the 3rd respondent against the appellant, in respect of the 3rd respondent's money in the appellant's custody, that the proper court to entertain such a suit is the Federal High Court principally because the appellant (Central Bank of Nigeria) is an agency of the Federal Government.

The Court of Appeal did not buy the argument that the section did not specify particularly that garnishee proceedings be initiated at the Federal High court.

Also in **CENTRAL BANK OF NIGERIA V ALHAJI MOHAMMED KAKURI (2016) LPELR – 41468(CA)** decided on 21st December, 2016. An appeal against the garnishee order absolute made by the High Court of Federal Capital Territory Abuja against the appellant.

The trial court had dismissed the application to set aside the garnishee order absolute stating it was functus officio. The Court of Appeal held that while it is trite that a court of law renders itself functus officio and ceases to have jurisdiction in respect of the cause or issue, however, there is an exception to the principle which is that a court can revisit its order or decision and set it aside on the ground that it is a nullity or was made without jurisdiction or as a result of fraud committed on the court or misrepresentation or illegality.

On Order VIII Rule 2 of the Judgement (Enforcement) Rules, the Court of Appeal further held that the court where the Police Service Commission (2nd judgment debtor) can sue the Central Bank of Nigeria (garnishee) for the funds in the custody of the garnishee/appellant, attached by the garnishee order is the Federal High Court of Nigeria and not the High Court of the Federal Capital Territory.

That it would be a suit against the Central Bank of Nigeria arising from the fiscal measure of custodying funds belonging to government and their agencies and the resulting transaction between the government or its agency and

S.251 (1) (d) of the 1999 Constitution vests exclusive jurisdiction in and over such suits in the Federal High Court of Nigeria.

The court declared the order absolute a nullity for want of jurisdiction citing with approval the decisions in **CBN V OKEB NIG LTD (SUPRA) AND CBN V AUTO IMPORT/EXPORT (2012) LPELR – 7858 (CA)**. The order absolute was therefore set aside.

I have in turn read **CBN V INTERSTELLA COMMUNICATIONS LTD (supra)** relied upon by learned counsel for the judgment creditor. Regarding the issue before this Court, whether the High Court of the Federal Capital Territory has jurisdiction to entertain these garnishee proceedings, I agree with Ibikunle – Amopetu Esq. that **CBN V INTERSTELLA COMMUNICATIONS LTD (supra)** is not applicable. It was an appeal from a decision of the Federal High Court and had nothing to do with the jurisdiction of the High Court of the Federal Capital Territory.

It therefore means that the law applicable is as decided in **CBN V AUTO IMPORT/EXPORT; CBN V OKEB NIG LTD AND CBN V ALHAJI MOHAMMED KAKURI (supra)**.

On the authority of these Court of Appeal decisions therefore, I hold, as I am bound to, that the High Court of the Federal Capital Territory has no jurisdiction to entertain these garnishee proceedings against the Central Bank of Nigeria.

Accordingly, the objection is sustained. The order nisi which was made on 31st October 2018 without jurisdiction is hereby set aside. The garnishee proceedings are thereby struck out.

Hon. Judge