

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT BWARI, ABUJA -FCT.**

**CLERK: CHARITY ONUZULIKE
COURT NO. 11**

**SUIT NO: FCT/HC/M/8405/2020
FJ/14/2020
M/11123/2020**

DATE: 15-09-2021

BETWEEN:

**BARR. GABRIEL ALLAHNANA ONU
(for himself and on behalf of the family
of the OnuOnoja Ai-Oko of AdumOtukpa,
Ogbadibo LGA Benue State.)JUDGMENT CREDITOR/RESPONDENT**

AND

OGBADIBO LOCAL GOVERNMENT COUNCIL... J/DEBTOR/APPLICANT

- 1. ACCESS BANK PLC**
- 2. ECOBANK PLC**
- 3. FIDELITY BANK PLC**
- 4. FIRST BANK OF NIGERIA LIMITED**
- 5. FIRST CITY MONUMENT BANK (FCMB) LTD**
- 6. GUARANTY TRUST BANK PLC**
- 7. HERITAGE BANK PLC**
- 8. KEYSTONE BANK PLC**
- 9. POLARIS BANK PLC**
- 10. STANBIC IBTC PLC**
- 11. STERLING BANK PLC**
- 12. UNION BANK OF NIGERIA (UBN) PLC**
- 13. UNITED BANK FOR AFRICA (UBA) PLC**

GARNISHEES

14. UNITY BANK PLC
 15. ZENITH BANK PLC
- (ALL OF ABUJA AND MAKURDI)

RULING
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

In this application vide Motion on Notice number M/11123/2020 dated 14/10/2020 but filed on the 15/10/2020 wherein the principal relief of the Applicant/Judgment Debtor is as follows:

An Order setting aside ruling dated 23rd day of July, 2020, vide suit No. FCT/HC/M/8405/2020; FJ/14/2020.

It was brought pursuant to Order 43(1) of the FCT High Court (Civil Procedure) Rules, 2018.

In support is a 7-paragraph affidavit with one exhibit attached and a written address.

The learned Counsel to the Judgment Debtor/Applicant while moving the Motion in Court placed reliance on all the paragraphs of the supporting affidavit and as well adopted the written address as his argument in support of the application.

In his Reply, the learned Counsel to the Judgment Creditor/Respondent, Mr. OkpaleEsq. submitted that this matter was adjourned for Judgment on the 9/9/20. This was before this application was filed on 15/10/2020. He submitted further that this application is tantamount to an application to arrest the Judgment of the Court which is therefore not competent. He urged the Court to strike out the application and proceed to deliver the Judgment. He substantiated his submission with the case of **OJONYE VS. ONU & ORS (2018) LPELR 44212 (CA) 28.**

Mr. Okpale contended that assuming the Court wants to consider the application, the only ground posited for this application is that the Judgment Creditor/Respondent did not seek the consent of Attorney General of Benue State before attaching the fund.

As the Solicitor General for Benue State, he told the Court that the arguments of the applicant are part of their own arguments too. So, their arguments cover the applicant's own. He finally urged the Court to go ahead and deliver her Judgment.

In his written address the applicant's learned Counsel submitted one issue for consideration which is this;

“Whether Judgment against the Ogbadibo Local Government Council of Benue State herein the Judgment Debtor can be enforced without first the consent of the Attorney General of Benue State being sought and obtained.”

It is the argument of the applicant that **Section 84 of the Sheriff and Civil Process Act Cap. S6 LFN 2004** makes it a condition precedent that the consent of the Attorney General, in this case,(Benue State)must first be sought and obtained before any form of enforcement in the nature of garnishee against a public officer (in this case) the Ogbadibo Local Government Council of Benue State can become competent.

He further submitted that a condition precedent where required by statute must first be met as otherwise the proceeding before the Court becomes incompetent and the Court would thereby be robbed of jurisdiction to entertain the same. For all these submissions, he cited the cases of **CHRISTOPHER ONJEWU VS. KOGI STATE MINISTRY OF COMMERCE & INDUSTRY 2 ORS (2003) 10 NWLR (PT. 827) 40; GOVT. OF AKWA IBOM STATE VS. POWER**

COM. NIG. LTD & OR (2004) 4 NWLR (PT. 88) 202; ALHAJI WIDI USMAN JALLO VS. MILITARY GOVT. OF KANO STATE (1991) 15 NWLR (PT. 194) 754.

Finally, he urged the Court to strike out the whole proceedings against the Judgment Debtor Ogbadibo Local Government Council of Benue State on the basis of the absence of the consent of the Honourable Attorney General of Benue State being first sought and obtained.

On his part, Mr. Okpale of learned Counsel to the Judgment Creditor/Respondent submitted swiftly that the Order *Nisi* sought by the Applicant's Counsel to be set aside was obtained against commercial Banks which are not public officers. So, provision of **S. 84 of Sheriff and Civil Process Act** relied upon by the Judgment Debtor/Applicant does not apply. And that the Order *Nisi* was in order as made by the Court.

For this position, he relied *inter alia* on the cases of **PURIFICATION TECHNIQUES (NIG) LTD VS. A.G. OF LAGOS STATE & ORS (2004) 9 NWLR (PT. 879) 665; CBN VS. INTER STELLA NIG. LTD (2018) LPELR** and most recently the Appellate Court re-stated the position of the law in the case of **UTAVIE & ORS. VS. CAPITAL DEVELOPMENT AUTHORITY & ORS. (2019) LPELR – 49095 (CA).**

Finally, he urged the Court to dismiss this application.

I have considered this simple application. I have adverted my mind seriously to all the submissions and the cases cited both for and against the grant of this application.

I agree with the applicant's learned Counsel *in toto* that the sole issue he submitted for consideration is the right and correct issue for determination. I however, with due respect to him disagree with all his arguments and submissions. They are misconceived.

With due respect to him again, all the cases relied upon by him cannot avail him as they are not on all fours with the facts and circumstances of this case. **Section 84 of Sheriffs and Civil Process Act 2004**, the provision under which the Applicant wants to take shield has been interpreted by the Appellant Court as well as Apex Court.

In the rightly and aptly cited case of **UTAVIE (Supra)** by Mr. Okpale which facts are on all four with the instant case. The Judgment Creditor in that case having served the Judgment Debtor with the Order *Nisi* in an attempt to enforce the Judgment, the Judgment Debtor came with the similar application like the one under consideration and on the same ground that consent of Attorney General was not obtained before instituting the garnishee proceeding to attach the fund of the State (Judgment Debtor).

The Appellate Court when confronted with the same issue and while analysing the provisions of **Section 84 of Sheriffs and Civil Process Act 2014** resolved the misconception without mincing words in **UTAVIE'S Case (Supra)**.

Section 84 provides thus:

- (1) *“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 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 money in custodia legis, as the case may be.”*

- (3) *In this section “appropriate officer” means*
- (a) *In relation to money which is in the custody of a public officer who holds a public office in the public service of the Federation.*
 - (b) *In relation to money which is in the custody of a public officer who holds a public officer in the public service of a State, the Attorney General of the State.”*

The relevant phrase for purposes of this application is: “money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity”. Thus, where the money liable to be attached by Garnishee proceedings is in the custody or under the control of a public officer in his official capacity, that Order *Nisi* shall not be made without the consent of the Attorney General whether of Federal or State. See **UTAVIE’S Case (Supra). But that is not the case here.**

The money liable to be attached are in Commercial Banks. Not even in Central Bank of Nigeria or in custody of any Public Officer. The question that needs to be answered is: can the monies in these Garnishee Banks be said to be in the custody or under the control of public officers in their official capacities?

The Court of Appeal said thus:

“.....They cannot by any stretch of imagination be referred to as ‘public officers’ in their official capacities”. It is logical and common sense supports the idea since they (Garnishee banks) are not public officers then monies deposited into their vaults by whosoever either public officers or private persons are in

the custody or under the control of the said commercial banks which are the Garnishee bankers in this suit. It follows therefore that the monies so attached by the Order Nisi are in the custody and under control of the said Garnishee Banks. They are not public officers as defined by section 84 of the Sheriffs and Civil Process Act, therefore the said section 84 (Supra) is not applicable in the instant suit". See **PURIFICATION (Supra).**"

Without rigmaroling and in effect therefore, this application lacks in all merits and it is thereby dismissed.

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S. B. Belgore
(Judge) 15-09-21