

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 15<sup>TH</sup> DAY OF NOVEMBER, 2022.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**

SUIT NO.: -FCT/HC/CV/2281/21  
MOTIONNO.: -FCT/HC/M/9740/22

**BETWEEN:**

**HELIOS NIGERIA LIMITED:.....JUDGMENT CREDITOR/  
RESPONDENT.**

**AND**

**THE NATIONAL ASSEMBLY OF THE  
FEDERAL REPUBLIC OF NIGERIA:....JUDGMENT DEBTOR/  
APPLICANT.**

**AND**

1) CENTRAL BANK OF NIGERIA  
2) ECOBANK NIGERIA PLC  
3) ACCESS BANK PLC  
4) ZENITH INTERNATIONAL BANK PLC  
5) FIDELITY BANK PLC  
6) UNITED BANK FOR AFRICA PLC  
7) GUARANTY TRUST BANK PLC  
8) FIRST BANK OF NIGERIA PLC  
9) UNION BANK OF NIGERIA PLC  
10) UNITY BANK PLC

} :...GARNISHEES

Sumotewani Agbor with S.O. Ekunke and Preiana Akpoagu for the Judgment Creditor.  
Edwin C. Muokwude with Faith F. Dada for Judgment Debtor.  
Raphael A. Okerie holding the brief of Halilu M. Halilu for the 2<sup>nd</sup> Garnishee.  
Brenda Oluwade for 10<sup>th</sup> Garnishee.

**RULING.**

The Judgment Debtor/Applicant brought this preliminary objection contending that this Court lacks both the substantive

and procedural jurisdiction to entertain or further entertain the Garnishee proceeding.

The Applicant thus, prays the Court for the following:

1. An order declining jurisdiction to entertain or further entertain this garnishee proceeding, for incompetence and lack of jurisdiction, having been wrongly initiated by Order Nisi of 29<sup>th</sup> June, 2022.
2. And for such further Orders as this honourable Court may deem fit to make in the circumstances of this case.

The Judgment Debtor/Applicant founded her preliminary objection on the following grounds:

1. That by virtue of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order VIII Rule 2 of the Judgment Enforcement Rules, it is only the Federal High Court that has exclusive jurisdiction to entertain a garnishee proceeding involving an agency of the Federal Government of Nigeria –Central Bank of Nigeria.
2. That the Order Nisi was made without the requisite jurisdiction, for failure of the Judgment Creditor to first obtain consent from the Attorney General of the Federation, as mandatorily stipulated in Section 84 of the Sheriffs and Civil Process Act, 2004.

The Application was supported by an 11 paragraphs affidavit deposed to by one Oluwafemi Popoola, wherein the Applicant averred that the Judgment Creditor failed to meet the conditions precedent required for a valid commencement of the garnishee proceeding and for activation of this Court's jurisdiction.

In his written address in support of the preliminary objection, learned Judgment Debtor/Applicant's counsel, Edwin C. Muokwudo, Esq, raised a sole issue for determination to wit;

***“In view of the Judgment Creditor’s failure to fulfil the conditions precedent required to competently maintain this garnishee proceedings, whether this Court ought not to decline jurisdiction in further proceeding with the conduct of this case?”***

Proffering arguments on the issue so raised, learned counsel contended that the Court to be approached by a Judgment Credit to pursue a Garnishee proceeding must be such that, the Judgment Debtor can competently commence an action in recovery of debt against the Garnishee. He referred inter alia, to **Central Bank of Nigeria v. Auto Import Export (2013) 2 NWLR (Pt.1337) 80; Central Bank of Nigeria v. Okeb Nig. Ltd (2014) LPELR-23162(CA); Central Bank of Nigeria v. Joseph Azoro&Ors (2018) LPELR-44389(CA); Section 251 (1) of the 1999 Constitution (as amended); and Order VIII Rule 2 of the Judgment (Enforcement) Rules.**

He posited that a Court has to have jurisdiction to entertain the suit by a Judgment Debtor against the Garnishee in respect of a debt before a garnishee proceeding can be initiated in that Court.

He submitted that by virtue of the provisions of Section 251(1)(d) of the 1999 Constitution (as amended) and Order VIII Rule 2 of the Judgment (Enforcement) Rules, only the Federal High Court is imbued with the requisite jurisdiction in garnishee proceedings involving an agency of the Federal Government, such as the Central Bank of Nigeria – the 1<sup>st</sup> Garnishee herein.

Learned counsel argued that in so far as the High Court of FCT cannot exercise subject matter jurisdiction in a dispute

between the Judgment Debtor and the CBN in an action for recovery of debt, it follows that this Court has no jurisdiction over any garnishee proceedings involving the CBN. He urged the Court to so hold, as he placed further reliance on **Central Bank of Nigeria v. Joseph Azoro & Ors (supra)**.

He posited that it is well settled that, where the Constitution or a statute provides for a particular way/mode of doing a thing or for the attainment of a particular objective that that mode, and no other, must be followed.

Relying on **Denton-West v. Muoma (2007) LPELR-8172(CA)** and **Purification Techniques (Nig) Ltd v. A.G. Lagos State (2004) 9 NWLR (Pt.879)665 at 677**, he submitted that garnishee proceeding is a separate and independent proceeding, and thus that a Court may have jurisdiction on the suit which birthed the judgment sought to be enforced, but if the route of enforcement chosen is garnishee proceeding, the Court may lack jurisdiction.

He contended that given the fact that, only the Federal High Court can exercise jurisdiction in any matter involving an agency of the Federal Government pertaining to banks and banking activities, that it follows that in view of the fact that the Central Bank of Nigeria is a party to the instant garnishee proceedings, the only Court vested with the jurisdiction to entertain the matter is the Federal High Court, pursuant to the clear provisions of Section 251(1) of the 1999 Constitution (as amended).

He posited that premised on the above position of the law, that this Court has no jurisdiction to entertain the instant garnishee proceeding, and therefore, that the garnishee Order Nisi made on 29<sup>th</sup> June, 2022, was made without jurisdiction and is thus, liable to be set aside.

Arguing further, learned counsel contended on ground 2 of his objection, that the Order Nisi made in this case, was made without the requisite jurisdiction, for failure of the Judgment Creditor to first obtain consent from the Attorney General of the Federation, as mandatorily stipulated in Section 84 of the Sheriffs and Civil Process Act, 2004.

He posited that by the provisions of Section 84 (1) & (3) of the Sheriffs and Civil Process Act; where monies sought to be attached are in the custody of a public officer, the Court will only have jurisdiction to attach same, if the consent of the Attorney General of the Federation has been obtained. That where however, the Court had already attached same, only to find out that the consent of the Attorney General of the Federation was not obtained aforetime, it has a duty *ex debitojustitiae* to set same aside.

Relying on **Ibrahim v. JSC (1998)14 NWLR (Pt.584)1 at 35,** and **FGN v. Zebra Energy Ltd (2002)18 NWLR (Pt.798)162 at 195,** he submitted that a public officer is not limited to a natural person but also includes an artificial person like the 1<sup>st</sup> Garnishee.

He referred to **CBN v. Adedeji (2004) 13 NWLR (Pt.890) 226 at 245,** **CBN v. Musa Zakari (2018)LPELR-447 (CA),** and posited that there must be evidence that the consent of the Attorney General of the Federation had been sought and obtained, before this proceeding involving the 1<sup>st</sup> Garnishee can be said to be competent.

He further referred to **Onjewu v. K.S.M.C.I. (2003)10 NWLR (Pt.827)40 at 78-79; CBN v. Cliff Ezeobika & 8 Ors(unreported – Appeal No. CA/C/176/2020).**

He contended that the failure of the Judgment Creditor to present evidence before this Court, evidence that the Attorney

General's consent was obtained, is fatal to the competence of the Garnishee Order Nisi made by the Court on 29<sup>th</sup> June, 2022.

He argued that the Order Nisi was made pursuant to an incompetent application, and that this Court lacks the jurisdiction to proceed with further conduct of this proceeding.

He urged the Court, in conclusion, to set aside the extant Order Nisi, and to decline jurisdiction in further entertaining this proceeding.

Following a counter affidavit filed by the Judgment Creditor/Respondent, the Judgment Debtor/Applicant filed a 9 paragraphs Further Affidavit wherein it averred that it has taken steps to appeal the judgment of this Court to the Court of Appeal. Also, that contrary to the Judgment Creditor's assertion in paragraphs 8 and 11 of its counter affidavit, the Judgment Creditor acknowledges the necessity of obtaining the Attorney General's consent before the commencement of a garnishee proceeding such as this instant, hence its application to the Attorney General of the Federation for his consent to commence this proceeding after it had obtained the Garnishee Order Nisi, which consent it has failed to obtain.

The said Judgment Creditor/Respondent's application letter to the Attorney General of the Federation, was annexed as Exhibit 'A'.

In his written address in support of the further affidavit, learned Judgment Debtor/Applicant's counsel reiterated, in respect of the 1<sup>st</sup> issue for determination raised by the Judgment Creditor/Respondent in its written address in support of its counter affidavit, that Section 251 of the 1999 Constitution, and Order VIII Rule 2 of the Judgment (Enforcement) Rules, oust the jurisdiction of the State High Court from entertaining

garnishee proceedings of this nature. That the provision of Order VIII, Rule 2 of the Judgment (Enforcement) Rules, presupposes that a Court would have jurisdiction to entertain any garnishee proceedings where the Judgment debtor can sue the garnishee in respect of the debt sought to be attached by the Judgment Creditor. He referred to **CBN v. Kakuri (2016)LPELR-41468 (CA)**.

He posited that the Court of Appeal in **CBN v. NX2 merchant Nig Ltd &Ors (2022)LPELR-57490(CA)**, was never faced with the question of the provisions of Order VIII, Rule 2 of the Judgment (Enforcement) Rules, which was clearly resolved by the Court of Appeal in **CBN v. Kakuri (supra)**.

He submitted that this Court lacks the jurisdiction to entertain this garnishee proceeding as only the Federal High Court has the jurisdiction to entertain the proceedings against the Central Bank of Nigeria as a garnishee.

Responding to the second issue for determination raised by the Judgment Creditor/Respondent, the learned counsel posited that the Judgment Creditor/Respondent had by its letter dated 12<sup>th</sup> April, 2022, to the Attorney General of the Federation (Exhibit 'A'), admitted that there is abundance of need to seek and obtain the consent/fiat of the Attorney General before the commencement of this proceeding, eventhough the said letter was submitted after the Order Nisi in this proceeding had been entered, which is against the express provision of Section 84 of the Sheriffs and Civil Process Act.

He argued that it would be unethical for the Judgment Creditor, to in one breath seek the consent of the Attorney General to commence this proceeding and in another breath argue that the consent of the Attorney General is not required to commence

this garnishee proceeding where the Central Bank of Nigeria is a garnishee.

He urged the Court to hold that the Judgment Creditor by its letter of 12<sup>th</sup> April, 2022, has admitted that the consent of the Attorney General of the Federation is required before the commencement of this proceeding and that having failed to obtain the consent, this Court lacks the jurisdiction to entertain this proceeding as presently constituted.

Learned counsel placed reliance on **Unity Bank PLC v. Igala Constr. Ltd (2021) 10 NWLR (Pt.1785) 407 at 446** to submit that the decision of the Supreme Court in **CBN v. Interstella Communication Ltd (2018)7 NWLR (Pt.1618)294**, never overruled the earlier decision on the personality of the Central Bank of Nigeria as a public officer in line with Section 84 of the Sheriffs and Civil Process Act.

He urged the Court to discountenance the counter affidavit and submissions of the Judgment Creditor, and to strike out this proceeding for lack of jurisdiction to hear and entertain this suit as the Judgment Creditor has failed to satisfy the condition precedent of obtaining the consent of the Attorney General before instituting this garnishee proceeding.

In opposition to the Judgment Debtor's notice of preliminary objection, the Judgment Creditor/Respondent filed a 17 paragraphs counter affidavit deposed to by one Mary M. Igoh, legal practitioner in the law firm of the Judgment Creditor's solicitors.

The Judgment Creditor/Respondent averred that the subject matter of this garnishee proceeding is for recovery of debt which arose from a simple contract. That the Federal High Court has no jurisdiction on the subject matter giving rise to the judgment from which this proceeding emanates and that the



consent of the Attorney General is not required to initiate this proceeding as none of the parties in this suit is a public officer.

The Judgment Creditor/Respondent further averred that the grant of this application would occasion injustice and cause untold hardship on the Respondent and that the interest of justice will best be served if the application is dismissed.

In his written address in support of the counter affidavit, learned counsel for the Judgment Creditor/Respondent, Kanu G. Agabi (SAN), raised two issues for determination, namely;

- a. Whether the provision of Section 251 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Order VIII Rule 2 of the Judgment (Enforcement) Rules oust the jurisdiction of the State High Court from entertaining garnishee proceeding?
- b. Whether the Central Bank is a public officer requiring the consent of the Attorney general of the Federation for the attachment of the funds in its custody in the garnishee proceeding?

Proffering arguments on issue 1, learned counsel posited that the contention of the Applicant that by the provisions of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Order VIII Rule 2 of the Judgment (Enforcement) Rules, the jurisdiction of the High Court of FCT was ousted from entertaining a garnishee proceeding involving the Central Bank of Nigeria being an agency of the Federal Government of Nigeria, is unfounded and a clear misapplication of the law.

He contended that there is nowhere in the constitution or any other enactment where it is explicitly stipulated that any suit in which the Federal Government Ministry, Agency, Functionary

or Parasternal is sued, is only justiciable in the Federal High Court.

He submitted that in plethora of cases, it has been held that the determination of the jurisdiction of a Court to entertain a matter in which the Federal Government agency is a party, is mainly on the parties and subject matter of the suit. He referred to **The Government of Kwara State & Ors v. Irepodun Block Manufacturing Company & Ors (2012) LPELR-8532(CA).**

He argued that in the instant case, the subject matter of the substantive suit whose judgment gave birth to this garnishee proceeding stems from breach of a simple contract by the Judgment Debtor/Applicant. He posited that under Section 251 of the 1999 Constitution (as amended), the Federal High Court lacks the jurisdiction to hear issues pertaining to simple contract.

Learned counsel thus, argued that the enforcement of the judgment delivered against the Judgment Debtor/Applicant do not come under nor is it connected with banking, banks, other financial institution, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promisory notes and other fiscal measures.

He contended that the breach of simple contractual relationship, the subject matter of the substantive suit adjudged by the Court, is none of the matters mentioned in Section 251 of the constitution, same as garnishee proceeding. He referred to **CBN v. Maiyini Century Co. Ltd & Anor (2017) LPELR-43024 (CA).**

He posited that a garnishee proceeding, being a post-judgment proceeding and not an originating suit, is an aspect of the

enforcement of judgment and governed by the provisions of Section 287(3) of the 1999 Constitution (as amended), Sections 19 and 83 of the Sheriffs and Civil Process Act and Order VIII Rule 2 of the Judgment (Enforcement) Rules, and that as such, the provisions of Section 251 of the 1999 Constitution (as amended), cannot deprive this Court of its jurisdiction even where the 1<sup>st</sup> Garnishee is made a party in the suit. –**CBN v. NX2 Merchant & (Nig) Ltd & Ors (2022) LPELR-57490(CA).**

Learned counsel contended that Section 251 of the 1999 Constitution (as amended), has no bearing or relevance to enforcement of judgment or garnishee proceeding. That a Court that has the jurisdiction to deliver a judgment on breach of a simple contract or debt has the corresponding jurisdiction to enforce that judgment by garnishee proceedings in view of Section 287 of the 1999 Constitution (as amended).

He further posited that in complying with the provisions of Order VIII Rule 2 of the Judgment (Enforcement) Rules, the Judgment Debtor/Applicant cannot lawfully sue the 1<sup>st</sup> Garnishee in this suit for recovery of debt on a simple contract before the Federal High Court, as that is within the Original jurisdiction of this honourable Court. He referred to **Bank of Industry Ltd v. Obeya (2021) LPELR-56881(SC).**

He submitted that this Court is competently vested with the jurisdiction to hear the garnishee proceeding irrespective of the 1<sup>st</sup> Garnishee being a Federal Government agency, and urged the Court to so hold and dismiss the preliminary objection.

On issue 2, on whether the CBN is a public officer requiring the consent of the Attorney General of the Federation for the attachment of the funds in its custody in the garnishee proceedings, learned counsel posited that the CBN is not a public officer within the intendment of Section 318 of the 1999

Constitution of the Federal Republic of Nigeria (as amended), Section 84 of the Sheriffs and Civil Processes Act and under the Enforcement Act for which the consent of the Attorney General would be first sought and obtained before an action can be instituted against same.

He referred to **CBN v. Njemanze (2015) 9 NWLR (Pt.1663)1 at 36;Central Bank of Nigeria v. ShuaibuDoma (2018)LPELR-45639 (CA) 11-28;CBN v. Interstella Communication Ltd (2018) 7 NWLR (1618)294,** and**FGN &Anor v. Interstella Communications Ltd &Ors (2014)LPELR-23295(CA).**

Learned counsel submitted that the cases of **Unilorin v. Adeniran (2007)6 NWLR (Pt.1031)498 and Onjewu v. K.S.M.C.I. (2003)10 NWLR (Pt.827) 40** as canvassed by the Applicant in its written address are misapplied, and urged the Court to discountenance same in upholding his submission that the consent of the Attorney General is not a condition precedent in instituting this garnishee proceeding in which the CBN is a custodian of the funds sought to be garnished to satisfy the judgment debt.

He further submitted in conclusion that the Applicant is not entitled to the grant of the prayers sought in the preliminary objection and urged the Court to hold that it is constitutionally imbued with the vires to entertain and decide upon this garnishee proceeding, as the Order Nisi delivered on 29<sup>th</sup> June, 2022 was granted lawfully and within the competence of this Court.

The cardinal question to consider in the circumstances of this application, is whether the instant application by the Judgment Debtor/Applicant is competent.

This question stems from the fact that a garnishee proceeding, by its nature is a peculiar kind of proceeding distinct from other Court proceedings.

This position was made abundantly clear by the Court of Appeal in **CBN v. Okefe (2015)LPELR-24825 (CA)**, where the Court held per Omoleye, JCA, thus;

***“Without much ado, the position of the law is that, Garnishee proceeding is a separate and distinct action between the Judgment Creditor and the person or body known as the Garnishee, holding in custody the assets of the Judgment Debtor. Garnishee proceeding is ‘sui generis’, although it flows from the judgment that pronounced the debt.”***

The learned counsel for the Judgment Debtor/Applicant, in the course of moving his Notice of Preliminary Objection, submitted that the Judgment Debtor has the right to raise issue of jurisdiction in a garnishee proceeding.

He asserted that the said right was afforded the Applicant in the cases of **Gwede v. delta State House of Assembly &Ors (2019)LPELR-47441(SC)** and **CBN c. Kakuri (2016)LPELR-41468(CA)**.

Contrary to the assertion of the learned Applicant’s counsel however, the position of the law had long been established that a Judgment Debtor is not a necessary party in a garnishee proceeding as the proceeding is strictly between the Judgment Creditor and the garnishee(s).

This position cannot be made any further clearer as it was made in the case of **UBA v. Ekanem (2009)40 WRN page 150**, where the Court held that:

***“A Judgment Debtor is merely a nominal party whose money in the custody of the garnishee is being recovered by the Judgment Creditor in satisfaction of judgment debt he is owing to the Judgment Creditor. He is not required to appear before the Court to show cause why the order nisi should (not) be made absolute ..... So, to all ramifications, it is only the garnishee that is expected to react if the law is not properly followed or observed.”***

The above decided authority is clear to the effect that only a garnishee can react or complain where the law is not properly followed or observed in a garnishee proceeding.

It follows therefore, that any question as to jurisdiction of a Court in a garnishee proceeding can only be properly raised by a garnishee in such proceeding.

The foregoing position is not without the backing of judicial authority. Thus in **NIMASA v. Odey&Ors Suit No: CA/C/45/2009**, the Court of Appeal, per Ndukwe-Anyanwu, J.C.A held that:

***“It has been held severally that the judgment debtor is not supposed to be a party in a garnishee proceeding. It therefore, follows that the Applicant/Judgment debtor in this case, does not have any right to question the jurisdiction of the Court nor whether the hearing was fair or not. The only parties that may question the jurisdiction of the Court.... are the garnishee banks.”***

I am bound, vide the principle of stare decisis, by the above holding of the Court of Appeal, that the Judgment Debtor/Applicant has no right to question the jurisdiction of the

Court in a garnishee proceeding. The said holding of the appellate aptly applies to the instant application.

Accordingly, I find that this Notice of Preliminary Objection is incompetent, the Judgment Debtor/Applicant having no locus or right to question the jurisdiction of this Court.

The said notice of preliminary objection is accordingly dismissed.

On the other hand the question still remains whether the Order Nisi made on 29<sup>th</sup> June, 2022 in the garnishee proceedings was competent having regards to Section 251 of the 1999 Constitution and the case of **CBN v. Bakura (supra)**. The Court can suo moto, set aside any of its orders made in error that would occasion injustice. This instant case is one made in error by allowing the 1<sup>st</sup> Garnishee Central Bank of Nigeria an agent of the Federal Government of Nigeria to be a party to this garnishee proceedings. The order made is in error as acknowledged would require the Court to set aside the Order Nisi made, this Court having no jurisdiction to entertain any suit against the agent of the Federal Republic of Nigeria. This is in compliance with Section 251 of the 1999 Constitution as amended. Therefore, Order Nisi made on 29<sup>th</sup> June, 2022 in error is hereby set aside. See **Mr. Innocent Ibe v. Mr. Stephen Ibhaze (2016)LPELR 41556 (CA)**.

**HON. JUSTICE A. O. OTALUKA**  
**15/11/2022.**

