IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
DELIVERED ON THE 24TH OF JANUARY, 2025
BEFORE THEIR LORDSHIPS

JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
HELEN MORONKEJI OGUNWUMIJU	**JUSTICE, SUPREME COURT**
ADAMU JAURO	**JUSTICE, SUPREME COURT**
MOORE ASEIMO A. ADUMEIN	**JUSTICE, SUPREME COURT**
HABEEB ADEWALE. O. ABIRU	**JUSTICE, SUPREME COURT**

SC/CV/268/2021

BETWEEN

Central Bank of Nigeria ..... **Appellant**

AND

Inalegwu Frankline Ochife
The Inspector General of Police
The Commissioner of Police (FCT)
O/C Intelligence Response Team, Special Anti-Robbery Squad (SARS) Nigerian Police Force ..... Respondents

JUDGMENT
(DELIVERED BY HABEEB ADEWALE OLUMUYIWA ABIRU, JSC)

This appeal is against the judgment of the Court of Appeal sitting in the Abuja Division and delivered on the 4th of December, 2020 in Appeal No CA/A/111/2019.

The first Respondent commenced an action against the second to the fourth Respondents in the Federal High Court sitting in Abuja in Suit No FHC/ABJ/CS/156/2018 and was awarded damages in the sum of N50 Million in a judgment delivered on the 10th of October, 2018. By a motion *ex-parte* filed on the 14th of November, 2018, the first Respondent commenced garnishee proceedings before the Federal High Court, Abuja

for the enforcement of the payment of the judgment sum by seeking to attach sums standing to the credit of the second to the fourth Respondents in their accounts with the Appellant under the Treasury Single Accounts (TSA) policy. The case of the first Respondent on the application was that the second to the fourth Respondents maintained accounts with the Appellant under the Treasury Single Accounts policy of the Federal Government of Nigeria and that the accounts possessed sums in excess of the judgment sum. The first Respondent failed to mention the details of the said accounts belonging to the second to the fourth Respondents with the Appellant.

The trial Court granted the Order of Garnishee Nisi on the 10th of December, 2018 and it directed that the Appellant should attach the funds in the accounts of the second to the fourth Respondents in its possession to the tune of N50 Million and to pay the judgment sum to the Registrar of the Court or attend Court on the next adjourned date, the 11th of January, 2019, to either show cause why it should not be ordered to pay the money by the making of the Garnishee Order Absolute. The Garnishee Order Nisi was served on the Appellant on the 17th of December, 2018, and on the 7th of January, 2019, the Appellant filed an affidavit to show cause and wherein it deposed that it did not maintain any account(s) in the names of the second to the fourth Respondents and that it was thus unable to comply with the Garnishee Order Nisi to attach and pay the judgment sum.

On the 11th of January, 2019, the Appellant was absent from Court and was not represented by Counsel and Counsel to the first Respondent urged the Court to disregard the affidavit to show cause as same was filed out of time and did not deny or oppose the material aspects of the affidavit in support of the motion *ex-parte* and to proceed to make the Garnishee Order Absolute. In a Ruling delivered on the 21st of January, 2019, the Federal High Court held that indeed the affidavit to show cause of the Appellant was filed out of time and no step was taken to regularize

same and that it was thus incompetent and it disregarded same. The Federal High Court found that consequentially the averments in the affidavit in support of the motion *ex-parte* were deemed not contested and it granted the Garnishee Order Absolute against the Appellant.

The Appellant was dissatisfied with the Ruling and it caused its Counsel to file a notice of appeal dated the 6th of February, 2019 and containing three grounds of appeal against it to the lower Court. The lower Court heard the appeal on the merits and Counsel to the Appellant formulated three issues for determination by the lower Court in the appeal and these were:

i. Whether the trial Court was right to have held that the Appellant's affidavit to show cause was filed out of time and to have disregarded it for being incompetent.

ii. Whether the Appellant's right to fair hearing was not breached and a miscarriage of justice not occasioned when the trial Court made the Garnishee Order Absolute against the Appellant without considering its affidavit to show cause.

iii. Whether the trial Court was vested with jurisdiction to entertain the garnishee proceedings and make the order absolute against the Appellant.

The lower Court adopted the three issues formulated by the Counsel to the Appellant in resolving the appeal. In resolving the first and second issues for determination, the lower Court held that the rules governing garnishee proceedings did not prescribe a time limit within which a garnishee must file its affidavit to show cause, so long as it does so before the adjourned date for considering the making of the Garnishee Order Absolute. The lower Court noted that the Appellant filed its affidavit to show cause on the 7th of January, 2019, before the adjourned date of 11th of January 2019 and that, as such, same was competently filed. The lower Court held that the trial Court was in error in declaring the affidavit to

show cause incompetent and in disregarding same in making the Garnishee Order Absolute.

The lower Court, however, declined to declare the decision of the trial Court a nullity and to send the case back to the trial Court for reconsideration and it proceeded to exercise its powers under Section 15 of the Court of Appeal Act and Order 20 Rule 11 of the Court of Appeal Rules to rehear the garnishee proceedings and consider the Appellant's affidavit to show cause. The lower Court reproduced portions of the affidavit to show cause and noted the deposition of the Appellant that it did not maintain any account in the names of the second to the fourth Respondents and it continued its deliberations thus:

> **"The deposition here simply denied the fact of the account of the judgment debtor with the appellant. No other defence was offered from the affidavit to show cause. It is patently mischievous and an affront to the administration of justice for the appellant to bare facedly allege that it is not maintaining account(s) in the name of the judgment debtors. This Court cannot but act under Section 124 of the Evidence Act, take judicial notice of the fact that under the Federal Government Single Treasury Account (TSA) policy ... all the Government Ministries, MDAs accounts are now with the Central Bank of Nigeria. It cannot therefore be an acceptable defence for the Appellant to simply deny that it is not maintaining any account for the Judgment Debtors who are MDAs. This defence therefore is not satisfactory and it is hereby rejected."**

On the third issue for determination that the trial Court did not possess the requisite jurisdiction to hear the matter, the contention was that this was because the first Respondent did not obtain the fiat of the Attorney General of the Federation before commencing the garnishee proceedings. The lower Court deliberated thus:

> **"At this point, let me clearly state that garnishee proceedings is that which intends to achieve the result of enforcing judgment of the trial Court by paying the judgment debt ordered by the trial**

> Court to the judgment creditor. The law which is the Sheriff and Civil Process Act had laid down the modes of enforcing the judgment of the trial Court, the mode of enforcement through garnishee proceeding appears to be more effective and potent for monetary judgment debts...
>
> In the instant case, it is not on record that the judgment creditor or judgment debtors are fighting the judgment debt on appeal. Where the judgment debtor does not fight the judgment on appeal, the garnishee whose role is only to keep the money of the judgment debtor cannot raise issues in the enforcement to challenge the enforcement procedure adopted by the judgment creditor. In that circumstance, it is not the business of the garnishee to plead that the trial Court has no jurisdiction because the fiat of the Attorney General was not obtained before the enforcement of the judgment given against a judgment debtor ...
>
> The appellant in this appeal has no justifiable reason to contest the order of the lower Court. This appeal has again shown the modern trend of a garnishee joining the contest of the substantive litigants to fight a proxy war for the judgment debtor. This is no longer encouraged or tolerated in a garnishee proceeding."

The lower Court concluded its deliberations in the appeal by finding no merit in the appeal and dismissing same.

The Appellant was dissatisfied with the judgment of the lower Court and it caused its Counsel to file a notice of appeal dated the 12th of January, 2021 and containing four grounds of appeal against it. In arguing the appeal, Counsel to the Appellant filed a brief of arguments dated the 17th of June, 2021 on the 18th of June, 2021 while Counsel to the first Respondent filed a brief of arguments dated the 8th of March 2022 on the same date and Counsel to the second to the fourth Respondents filed a brief of arguments dated the 17th of May, 2022 on the 24th of May, 2022. Counsel to the Appellant filed a Reply brief of arguments to the first Respondent's brief of arguments and it was dated the 23rd of May, 2022

and filed on the same date. All the briefs of arguments were deemed properly filed by this Court on the 30th of May, 2022. Counsel to the Appellant further filed two lists of additional authorities on the 29th of October, 2024. At the hearing of the appeal, Counsel to the parties relied on and adopted their respective processes in arguing the appeal.

The Court notes that the second to the fourth Respondents distilled issues for determination in their brief of arguments and canvassed copious arguments berating the judgment of the lower Court and stating why the judgment should be set aside and the appeal succeed. This is rather strange. The settled position of the law is that the duty of a respondent in an appeal is to defend the judgment of the lower Court, and not to berate it – **Minister of Petroleum & Mineral Resources & Anor Vs Expo-Shipping Line (Nig) Ltd** (2010) LPELR 3169(SC),**Bakari Vs Ogundipe** (2020) LPELR 49571(SC) 49571(SC), **Obasanjo Vs Wuro Bogga Nigeria Ltd** (2022) LPELR 58486(SC), **NITEL Trustees Ltd Vs Syndicated Investments Holding Ltd** (2022) LPELR 58842(SC). A respondent's brief that violates this elementary law of appellate Court practice must be ignored by the Court. In **Zakirai Vs Muhammad & Ors** (2017) LPELR-42349(SC), Augie, JSC, made the point at Pages 14-15 thus:

> "It is a well-established principle of law that the primary duty of a Respondent in an appeal is to support the judgment/decision of a lower Court appealed against. Where a Respondent is not comfortable with a finding, not the entire Judgment, which he considers fundamental, he can challenge same by filing a cross-appeal ... Where the Respondent supports the judgment, but wants it affirmed on grounds other than those relied upon by the Court, he must then file a Respondent's Notice ...
>
> Without a cross-appeal or Respondent's Notice, he will not be allowed to attack the judgment, and the effect of violating this rule is that arguments in his brief in support of the Appellant will be ignored ... In this case, the fourth Respondent urged this Court to

allow the Appeal in Appellant's favour, which is wrong, and the end result is that the arguments in his brief will be ignored."

This Court will thus not countenance the brief of arguments of the second to the fourth Respondents in its consideration of this appeal.

Counsel to the Appellant distilled four issues for determination in this appeal. These were:

i. Whether the lower Court was right to hold that a garnishee cannot raise absence of jurisdiction where the judgment debtor is not contesting the judgment sought to be enforced.

ii. Whether the lower Court ought to have invalidated the garnishee order absolute pronounced by the trial Court without the consent of the Attorney General of the Federation which is a condition precedent for exercising jurisdiction over the garnishee proceedings.

iii. Whether the lower Court was right in invoking its powers under Section 15 of the Court of Appeal Act and Order 20 Rule 11 of the Court of Appeal Rules to determine the garnishee matter.

iv. Whether the lower Court was right or justified in relying on Section 124 of the Evidence Act, 2011 to reject the Appellant's denial of having accounts in the judgment debtors' names and to hold that the Judgment Debtors are MDAs (Ministries, Department and Agencies) whose account are with the Appellant under the Federal Government Treasury Single Account Policy.

On his part, Counsel to the first Respondent distilled three issues for determination in the appeal. These were:

i. Whether the Court below was right when it held that the Appellant is not a public officer in the context of the appeal and as such the consent of the Attorney General of the Federation

was not required for attachment of funds in its custody in the garnishee proceedings.

ii. Whether the lower Court was right in relying on Section 124 of the Evidence Act 2011 to reject the Appellant's denial of having accounts in the names of the judgment debtors and to hold that the judgment debtors are MDAs (Ministries, Department and Agencies) whose account are with the Appellant under the Treasury Single Account Policy.

iii. Whether the Appellant has shown sufficient reason why the Supreme Court should set aside the concurrent judgments of both the Appellate and the trial Court.

This Court is of the view that it can dispose of some of the issues for determination formulated by the Counsel to the parties without the need of reproducing the arguments canvassed thereon by the parties. It is settled law that an issue for determination in an appeal and the arguments canvassed thereunder must be predicated upon and be directed at the *ratio decidendi* of the decision of the Court appealed against – **Archianga Vs Attorney General, Akwa Ibom State** (2015) 6 NWLR (Pt 1454) 1, **Omoniyi Vs Alabi** (2015) 6 NWLR (Pt 1456) 572, **Olawoye Vs State** (2022) LPELR 57382(SC), **Ironbar Vs Federal Mortgage Finance Ltd** (2024) LPELR 62186(SC). Where an issue for determination does not arise from and/or is not directed at the *ratio decidendi* of the judgment appealed against, it is incompetent and liable to be struck out – **Atanda Vs Commissioner for Land and Housing, Kwara State** (2018) 1 NWLR (Pt 1599) 32, **Tabansi Vs Tabansi** (2018) 18 NWLR (Pt 1651) 279, **Ugwu Vs State** (2020) 15 NWLR (Pt 1746) 1.

The entire findings made by the lower Court in dismissing the appeal of the Appellant are contained in the excerpts of the judgment reproduced above. It is obvious that nowhere therein did the lower Court find or make any statement as to the status of the Appellant, whether it is a public

officer or not, in resolving the issue of failure to obtain the fiat of the Attorney General of the Federation. The first issue for determination formulated by Counsel to the first Respondent has no root in nor any relation with the findings made by the lower Court in the judgment. The issue for determination is incompetent and it is hereby struck out along with the arguments canvassed thereon.

Looking at the first and second issues for determination formulated by Counsel to the Appellant, the gist of the contentions under the two issues for determination revolve around whether or not the fiat or consent of the Attorney General of the Federation was obtained as a condition precedent to the commencement of the garnishee proceedings as provided in Section 84 of the Sheriffs and Civil Process Act. Counsel to the Appellant contended that the failure to so obtain the fiat or consent robbed the trial Court of jurisdiction to entertain the garnishee proceedings and that it is an issue that can be raised at any time. Now, the word "jurisdiction" is an overarching generic word with many subsets, but perhaps the two major subsets are "procedural jurisdiction" and "substantive jurisdiction". It is essential to understand that there is a whole world of difference between procedural jurisdiction and the substantive jurisdiction of a court to hear a matter.

This Court has stated severally that an irregularity in the exercise of jurisdiction should, and must not, be confused with total lack of jurisdiction which takes cognizance of the general meaning of the word "jurisdiction" as the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. Procedure for invoking the jurisdiction of court is different from the power of the court to decide matters which on the face of the proceedings have been presented in the formal way for its decision and which are within its jurisdiction. It is generally accepted that matters (including facts) which define the rights and obligations of the parties in controversy are matters of substance defined by substantive law, whereas

matters which are mere vehicles which assist the court or tribunal in going into matters before it are matters of procedure – **Mobil Producing (Nig) Unlimited Vs Lagos State Environmental Protection Agency** (2002) 18 NWLR (Pt 798) 1, **Attorney General, Kwara State Vs Adeyemo** (2017) 1 NWLR (Pt 1546) 210, **Achonu Vs Okuwobi** (2017) 14 NWLR (Pt 1584) 142, **Bakari Vs Ogundipe** (2021) 5 NWLR (Pt 1768) 1, **Veepee Industries Limited Vs Ocean Fisheries Nigeria Limited** (2023) LPELR 59878(SC), **Total Exploration & Production Nigeria Ltd Vs Okwu** (2024) LPELR 62623(SC).

Following this classification, this Court has held that failure of a party to comply with a condition precedent before embarking on a court action is a matter of procedural jurisdiction, and not one of substantive jurisdiction – **Atolagbe Vs Awuni** (1997) 9 NWLR (Pt 522) 536, **Mobil Producing Nigeria Unlimited Vs Lagos State Environment Protection Agency** *supra*, **Owoseni Vs Faloye** (2005) 14 NWLR (Pt 946) 719, **Kayili Vs Yilbuk** (2015) 7 NWLR (Pt 1457) 26, **Attorney General of Kwara State Vs Adeyemo** (2016) LPELR 41147(SC), **Akahall & Sons Ltd Vs Nigeria Deposit Insurance Corporation** (2017) 7 NWLR (Pt 1564) 194. And the Courts have further held that where a party commences an action in respect of which a court possesses the substantive jurisdiction to determine and which on the face of it is not incompetent, he is deemed to have properly invoked the jurisdiction of the court and a matter of procedural jurisdiction which impugns this presumed competence of the action should be raised by the opponent at the earliest opportunity before taking any further step in the matter – **Gafari Vs Johnson** (1986) 5 NWLR (Pt 39) 66 at 71, **Atolagbe Vs Awuni** *supra*, **Mobil Producing Nigeria Unlimited Vs Lagos State Environment Protection Agency** *supra*, **Nigeria National Petroleum Corporation Vs Idi Zaria** (2014) LPELR 22362(CA), **Total Exploration & Production Nigeria Ltd Vs Okwu** *supra*, **Odu'a Investment Co Ltd Vs Michael** (2024) LPELR 62622(SC).

Where the matter of procedural jurisdiction is not so raised by the opponent and he proceeds to contest the matter on the merits, he will be deemed to have waived the irregularity and be foreclosed from raising it again – **Katsina Local Government Authority Vs Makudawa** (1971) 7 NSCC 119, **Attorney General, Bendel State Vs Attorney General of the Federation & Ors** (1981) LPELR 605(SC) at 204-205, **Ostankino Shipping Co. Ltd Vs The Owners, The MT Bata** (2022) 3 NWLR 9Pt 1817) 367, **Peoples Democratic Party Vs Muhammad** (2023) LPELR 60157(SC), **Habibu Vs State** (2023) LPELR 60351(SC), **Total Exploration & Production Nigeria Ltd Vs Okwu** *supra*. In **Julius Berger Nigeria Plc Vs Almighty Projects Innovative Ltd** (2022) 11 NWLR (Pt 1804) 201 at 257 – 258, this Court succinctly made the point thus:

> **"A party becomes aware of a procedural defect in a process upon being served with that process. The application to set aside the process on the ground of such defect must be made immediately after being served with the process and before taking any further step in the proceedings. If a party takes a further step in the proceedings and continues to participate in it without complaining about the procedural defect in the process the right to so complain or object to the process is waived. The party thereby condones the irregular procedure, and can no longer challenge the irregular process thereafter. The reason underlying this rule is that proceedings in court should focus on the resolution of the substance or core of the dispute between the parties in the case and not divert to matters that did not form part of the cause of action or that was not the subject of the dispute that the parties have taken to court for determination. Dwelling rather on the procedure for the trial of the dispute is a diversion from the dispute before the court..."**

It is matters of substantive jurisdiction, and which if resolved against a party renders the entire proceedings a nullity, that can be raised at any time, not matters of procedural jurisdiction – **Odu'a Investment Co. Ltd Vs Talabi** (1997) 10 NWLR (Pt 523 1, **Ndayako Vs Dantoro** (2004) 13

NWLR (Pt 889) 187, **Nagogo Vs Congress for Progressive Change** (2013) 2 NWLR (Pt 1339) 448, **Udo Vs The Registered Trustees of the Brotherhood of the Cross & Star** (2013) 14 NWLR (Pt 1375) 488, **Julius Berger Nigeria Plc Vs Almighty Projects Innovative Ltd** *supra*, **Odu'a Investment Co Ltd Vs Michael** *supra*. In the present case, the Appellant did not raise that issue of the failure of the first Respondent to obtain the fiat and/or consent of the Attorney General of the Federation before commencing the garnishee proceedings either in its affidavit to show cause or in any other process in the trial Court. The Appellant's affidavit to show cause met the case of the first Respondent on the garnishee proceedings on the merits. The Appellant had no right to raise the issue on appeal before the lower Court for the first time.

The appellate jurisdiction of the lower Court under Section 240, 241 and 242 of the Constitution of the Federal Republic of Nigeria 1999 in respect of appeals against the decisions of the High Court is limited to matters that were raised, canvassed and/or ruled upon by the High Court and also to matters that were properly raised before it. The lower Court has no jurisdiction to entertain and rule upon matters that were not raised, canvassed and/or decided by the High Court and/or matters that were not properly raised before it – **Anla Vs Anyanbola** (1977) NSCC (Vol 11) 162, **Sanusi Vs Ayoola** (1992) 9 NWLR (Pt. 265) 275, **Akpan Vs Bob** (2010) 17 NWLR (Pt 1223) 421, **Lababedi Vs Majekodunmi** (2018) 5 NWLR (Pt 1612) 369, **PML (Nig) Ltd Vs Federal Republic of Nigeria** (2018) 7 NWLR (Pt 1619) 448. The lower Court thus possessed no jurisdiction to entertain the issue of the failure of the first Respondent to obtain the fiat and/or consent of the Attorney General of the Federation before commencing the garnishee proceedings raised before it by the Appellant for the first time and its decision in respect thereof is therefore a nullity – **Nwa-Anyadike Vs INEC** (2023) 12 NWLR (Pt 1897) 1, **Orji Vs Chima** (2023) 17 NWLR (Pt 1912) 71.

It is correct that this question of the jurisdiction of the lower Court to adjudicate on the issue of failure to obtain fiat is being raised and determined by this Court *suo motu*. The law is that, being an issue touching on the substantive jurisdiction of the lower Court, it is one that this Court can so raise and so determine – **Akingbulugbe Vs Nigerian Romanian Wood Industries Ltd** (2023) 11 NWLR (Pt 1895) 339, **Ashaka Vs Nwachukwu** (2024) 8 NWLR (Pt 1942) 149, **Ughanwa Vs Inspector General of Police** (2024) 16 NWLR (Pt 1963) 91. It is trite law that this Court lacks jurisdiction to entertain and adjudicate over an appeal against a decision given by the lower Court without jurisdiction – **Nwoko Vs Waoboshi** (2020) 13 NWLR (Pt 1742) 395, **Oni Vs Fayemi** (2020) 15 NWLR (Pt 1746) 59, **Ebebi Vs Ozobo** (2022) 1 NWLR (Pt 1808) 165, **Ebebi Vs Esemokumor** (2022)1 NWLR (Pt 1812) 463, **NNPC Vs Fung Tai Engineering Co Ltd** (2023) 15 NWLR (Pt 1906) 117. It is in the light of the above that this Court will discountenance the first and second issues for determination formulated by Counsel for the Appellant. The two issues for determination and the arguments canvassed thereon by the parties are hereby struck out.

The contention of the Counsel to the Appellant on the third issue for determination was predicated on the success of the first and second issues for determination. Counsel argued that the power of the lower Court to invoke the provisions of Section 15 of the Court of Appeal Act and Order 20 Rule 11 of the Court of Appeal Rules 2016 to exercise the jurisdiction that a High Court would normally possess to determine a matter was not at large and was dependent on the High Court having had jurisdiction to adjudicate on the matter in the first place. Counsel stated that since, as argued under the first and second issues for determination, the High Court did not possess jurisdiction to hear the garnishee proceedings by reason of the failure to obtain the fiat of the Attorney General of the Federation, then the lower Court was wrong in exercising the power in the present instance. These arguments become futile in the face of this Court striking out the first and second issues for determination together with the

arguments canvassed under them. The third issue for determination is thus of no value in this appeal and this Court has no business determining an issue for determination that is of no value – **Okereke Vs Nwankwo** (2003) 9 NWLR (Pt 826) 592, **British American Tobacco Company Ltd Vs Attorney General of Oyo State** (2015) LPELR 41849(CA). The third issue for determination and the arguments canvassed thereon by the parties are thus also struck out.

These leave only one viable issue for determination in this appeal and it is the fourth issue for determination formulated by the Counsel to the Appellant and which is the same as the second issue for determination formulated by Counsel to the first Respondent. It is:

> Whether the lower Court was right or justified in relying on Section 124 of the Evidence Act, 2011 to reject the Appellant's denial of having accounts in the judgment debtors' names and to hold that the Judgment Debtors are MDAs (Ministries, Department and Agencies) whose account are with the Appellant under the Federal Government Treasury Single Account Policy.

This appeal will be resolved on this sole issue for determination. In arguing the issue for determination, Counsel to the Appellant stated that the Garnishee Order Nisi directed the Appellant to show cause why it should not be ordered to pay the judgment sum from monies of the Judgment Debtors in its possession. Counsel stated that the deposition in the affidavit to show cause of the Appellant, and which the lower Court rejected, was that none of the Judgment Debtors maintained an account with it. Counsel stated that the first Respondent did not file any affidavit countering the deposition of the Appellant, meaning that the deposition was unchallenged, and that it is elementary that unchallenged depositions in an affidavit are deemed admitted and would require no further proof and he referred to the case of **State Vs Commissioner for Boundaries Settlement, Oyo State** (1996) 37 LRCN 603. Counsel stated that the lower Court ought to have acted on the unchallenged deposition and not relied

on the provisions of Section 124 of the Evidence Act to reject the deposition and to classify the Judgment Debtors as MDAs (Ministries, Departments and Agencies) whose accounts are domiciled with the Appellant by reason of Treasury Single Account (TSA) Policy.

Counsel stated that contrary to the position taken by the lower Court the second to the fourth Respondents are not as MDAs (Ministries, Departments and Agencies) to which the Treasury Single Account Policy applied. Counsel stated that as MDAs (Ministries, Departments and Agencies) are government institutions and agencies while the second to the fourth Respondents are head and officers of the Nigeria Police Force, an agency of Government, and that the legal personality of an MDAs is different and separate from the legal personalities of its officers and they cannot substitute for each other. Counsel stated that the lower Court ought not to have invoked the provision of Section 124 of the Evidence Act to take judicial notice of a fact without affording the Appellant, who has been unfairly prejudiced by and suffered the consequence of an adverse finding based on the judicial notice, the opportunity of making submissions in relation thereto. Counsel stated that this is the mandatory provision of Section 124 (3) of the Evidence Act and that the word used in the provision is 'shall' and he referred to the cases of **Mamman Vs Bwacha** (2015) LPELR 40624(CA), **Utuk Vs The Official Liquidator (Utuks Construction and Marketing Co Ltd)** (2008) LPELR 4323(CA) on the meaning of word 'shall' when used in an enactment.

Counsel stated there is nothing on the records of appeal showing that the lower Court complied with this mandatory provision of Section 124(3) of the Evidence Act and that such non-compliance is not a mere irregularity that can be waived as its essence is to ensure fair hearing. Counsel stated that the effect of a decision reached without compliance with a mandatory statutory provision and which breaches a party's right to fair hearing is to render such a decision a nullity and he referred to the cases of **APC Vs Nduul** (2017) LPELR 42415(SC), **PDP Vs INEC** (2018) LPELR 44737(SC),

Adeyemi Vs Haruna (2018) LPELR 44538(CA). Counsel urged the Court to resolve the issue for determination in favour of the Appellant and to consequentially allow the appeal and set aside the judgment of the lower Court.

In his response arguments, Counsel to the first Respondent contended that the deposition of the Appellant in his affidavit to show cause that it does not maintain any account in the names of the judgment debtors is a bare evasive denial and did not thus controvert the assertions in the affidavit of the first Respondent in support of the garnishee proceedings and he referred to the provisions of Order 13 Rules 9, 13 and 14 of the Federal High Court (Civil Procedure Rules) 2019. Counsel stated that it is common knowledge that by the operation of the Treasury Single Accounts (TSA) system, all accounts belonging to agencies of the Federal Government of Nigeria, inclusive of the judgment debtors, are domiciled and managed exclusively by the Appellant, and no longer by commercial banks. Counsel stated that the lower Court was thus correct in invoking the provision of Section 124 of the Evidence Act to take judicial notice of this fact and to use same to debunk the deposition of the Appellant in its affidavit to show cause and that a fact that the Court must take judicial notice of requires no further proof and he referred to the cases of **Keystone Bank Ltd Vs A. O. S. Practice** (2013) LPELR 20357(CA), **Amaechi Vs INEC** (2008) LPELR 446(SC) and **Johnson Vs State** (2011) LPELR 1630(SC).

Counsel stated that it is not the duty of a garnishee to fight the proxy war of the judgment debtors, as the Appellant is presently doing, and that the whole world knows that by the Treasury Single Accounts (TSA) policy of the Federal Government of Nigeria, the accounts of the Nigerian Police Force and its affiliates and agents, being agencies of the Federal Government of Nigeria, are kept and maintained by the Appellant. Counsel referred to and quoted extensively from the case of **GT Bank Plc Vs Innoson Nigeria Ltd** (2017) LPELR 42368(SC) on the duty of a

garnishee not to fight a proxy war of a judgment debtor and stated that the Appellant, being the bankers of the judgment debtors, was only required to perform its statutory duty as garnishee, and not otherwise.

Counsel contended that the case made out by the Appellant in this appeal did not meet the threshold required by this Court to warrant it overturning concurrent findings of facts made by the trial Court and the lower Court and he referred to the case of **Agugua Vs The State** (2017) LPELR 42021. Counsel stated that the Appellant made no attempt to show how the concurrent findings of the two lower Courts were perverse and neither did it establish any form of miscarriage of justice occasioned by the judgments of the two lower Courts and that its grievances in this appeal are more imaginary than real and this Court has no business tampering with the concurrent findings of the two lower Courts and he referred to the case of **Olude Vs State** (2018) LPELR 44070(SC). Counsel concluded his arguments by praying the Court to resolve the issue for determination in favour of the first Respondent and to dismiss the appeal and affirm the judgment of the lower Court.

This appeal emanated from a garnishee proceeding. Now, garnishee proceedings are a process of enforcing a money judgment by the seizure or attachment of debts due and accruing to the judgment debtor, which forms part of his property in the hands of a third party for attachment. They are separate and distinct proceedings and are governed strictly by the provisions of the Sheriffs and Civil Process Act – **United Bank for Africa Plc Vs Ubokulo** (2009) LPELR 8923(CA), **Central Bank of Nigeria Vs Okeb Nigeria Ltd** (2014) LPELR 23162(CA), **Heritage Bank Ltd Vs Interlagos Oil Ltd** (2018) LPELR 44801(CA), **Sterling Bank Plc Vs Gamau** (2019) LPELR 47067(CA). Thus, the resolution of this appeal will turn largely on the issue of whether the steps taken by lower Court, while standing in the stead of the trial Court, in the conduct of the garnishee proceedings and in dismissing the appeal of the Appellant were in accord with the provisions of the Sheriffs and Civil Process Act.

The nature of and procedure for garnishee proceedings has been stated and reiterated by the Courts in several cases. Garnishee proceeding is one of the ways of executing a judgment. It is the procedure whereby the judgment creditor obtains the order of court to attach any debt owing to the judgment debtor from any person or body within the jurisdiction of the court to satisfy the judgment debt. That process is known as "attachment of debt." It is a separate and distinct action between the judgment creditor and the person or body holding custody of the assets of the judgment debtor, although it flows from the judgment that pronounced the debt owing. A successful party, in his quest to move fast against the assets of the judgment debtor usually makes an application *ex parte* for an order in that direction. If the application *ex parte* is adjudged to be meritorious, the Judge will make an order which is technically known as a "garnishee order *nisi*" attaching the debt due or accruing to the judgment debtor from such person or body who from the moment of making the order is called the garnishee. The order also carries a directive on the garnishee to appear and show cause why he should not pay to the judgment creditor the debt owed by it to the judgment debtor. The garnishee must appear before the court. If he does not appear in obedience to the order *nisi* or does not dispute liability, the court may then make the order *nisi* absolute pursuant to the provisions of section 86 of the Sheriffs and Civil Process Act – **Sokoto State Government Vs Kamdax (Nig) Ltd** (2004) 9 NWLR (Pt 878) 345, **Purification Techniques (Nig) Ltd Vs Attorney General of Lagos State** (2004) 9 NWLR (Pt 879) 665, **GT Bank Plc Vs Innoson Nigeria Ltd** (2017) LPELR 42368(SC), **First Bank of Nigeria Plc Vs Yegwa** (2022) LPELR 59630(SC), **Oboh Vs Nigeria Football League Ltd** (2022) LPELR 56867(SC).

Where a garnishee appears in Court in obedience to the garnishee order *nisi* and files an affidavit to show cause disputing liability, the Sheriffs and Civil Process Act provides what should happen. It says in its section 87 that:

> **"If a garnishee appears and disputes his liability, the Court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in any proceedings may be tried or determined, or may refer the matter to a referee."**

This provision has been interpreted by the Courts as containing the options available to a trial Court in resolving a situation where a garnishee disputes liability – see the cases of **Nigeria Hotels Ltd Vs Nzekwe** (1990) 5 NWLR (Pt 149) 187, **United Bank of Africa Plc Vs Societe Generale Bank Ltd** (1996) 10 NWLR (Pt 478) 381, **Guaranty Trust Bank Plc Vs Union Bank of Nigeria Plc** (2007) All FWLR (Pt 374) 377, **Fidelity Bank Plc Vs Okwuowulu** (2013) 6 NWLR (Pt 1349) 197, **Sterling Bank Plc Vs Gamau** (2019) LPELR 47067(CA), **Fidelity Bank Plc Vs Gamau** (2019) LPELR47608(CA).

The question that arises is – when is there said to be a dispute of liability by a garnishee and which requires further enquiry under section 87 of the Sheriffs and Civil Process Act? Is it once a garnishee appears to a garnishee order *nisi* and files an affidavit *simpliciter* to show cause? Or is it where a garnishee files an affidavit to show cause dovetailing on specifics and the facts deposed therein are countered or contested by the judgment creditor in a further affidavit? Or is it where a garnishee files an affidavit to show cause dovetailing of specifics, whether or not the judgment debtor counters those facts in a further affidavit?

The position of case law puts forward different scenarios – **Polaris Bank Ltd Vs Gamau** (2019) LPELR 47066(CA), **Fidelity Bank Plc Vs Gamau** *supra*. Firstly, that where a judgment creditor gives specific and clear facts in an affidavit showing that monies of a judgment debtor are in the hands of a garnishee, and the affidavit to show cause of the garnishee denying liability does not condescend on material particulars and does not conflict with the facts deposed by the judgment creditor, there is no dispute of

liability warranting further enquiry under section 87 of the Sheriffs and Civil Process Act, and the Court can go ahead and make an order of garnishee absolute – **Skye Bank Plc Vs Colombara & Anor** (2014) LPELR 22641(CA), **Governor of Imo State Vs Ogoh** (2015) LPELR 25949(CA), **Access Bank Plc Vs Adewusi** (2017) LPELR 43495(CA), **First Bank of Nigeria Plc Vs Okon** (2017) LPELR 43530(CA), **Heritage Bank Ltd Vs Interlagos Oil Ltd** (2018) LPELR 44801(CA), **First Bank of Nigeria Plc Vs Yegwa** (2018) LPELR 45997(CA). In other words, the garnishee must make out a prima facie case in favour of an order for an issue to be tried – **Central Bank of Nigeria Vs Sun & Paddy International Group (Nig) Ltd** (2018) LPELR 44766(CA).

Secondly, that where a judgment creditor gives specific and clear facts in an affidavit showing that monies of a judgment debtor are in the hands of a garnishee, and the affidavit to show cause of the garnishee denying liability condescends on particulars and conflict with the facts deposed by the judgment creditor, there is a dispute of liability warranting the use of section 87 of the Sheriffs and Civil Process Act – **Central Bank of Nigeria Vs Hydro Air Property Ltd** (2014) 16 NWLR (Pt 1434) 482, **Mainstreet Bank Ltd Vs United Bank for Africa Plc** (2014) LPELR 24118(CA), **Eco Bank (Nig) Plc Vs Mbanefo & Bros Ltd** (2014) LPELR 41106(CA), **Total Upstream Nigeria Ltd Vs A.I.C. Limited** (2015) LPELR 25388(CA).

The third scenario is where a garnishee order *nisi* is granted on the basis of a general statement of a judgment creditor that monies of a judgment debtor are in the hands of a garnishee, and the affidavit to show cause of the garnishee denying liability condescends on particulars showing that it has no such funds, a dispute as to liability warranting the use of section 87 of the Sheriffs and Civil Process Act will only arise where the judgment creditor deposes to a further affidavit contesting the assertions of the garnishee, otherwise the garnishee would be discharged on the basis of its deposition – **Zenith Bank Plc Vs Kano** (2016) LPELR 40335(CA), **Eco Bank Nigeria Limited Vs Udofia** (2018) LPELR 45164(CA), **All Works**

Commercial Company Ltd Vs Central Bank of Nigeria (2018) LPELR 45991(CA). This is in furtherance of the principle that where specific facts in a response affidavit are not covered by the depositions in the original affidavit, the party must file a further affidavit to counter those specific facts, otherwise they will be deemed admitted – **Badejo Vs Federal Ministry of Education** (1996) 8 NWLR (Pt 464) 15, **Dana Airlines Ltd Vs Yusuf** (2017) LPELR 43051(CA), **Yandy Vs Alhaji Umar Na Alhaji Lawan & Sons Ltd** (2018) LPELR 45634(CA), **Akiti Vs Oyekunle** (2018) LPELR 43721(SC).

There is a fourth scenario and this is where a garnishee order *nisi* is granted on the basis of a general statement of a judgment creditor that monies of a judgment debtor are in the hands of a garnishee, and the affidavit to show cause of the garnishee denying liability similarly contains a general statement that the monies of the judgment debtor are not in its hands, without either affidavits condescending on material particulars, such that the depositions in the two affidavits do not outweigh each other, there is said to be an equilibrium. In this circumstance, the Court will discharge the garnishee as the judgment creditor who has the onus to show that monies belonging to the judgment debtor are in the hands of the garnishee will be held not have discharged the burden of proof. The law is that civil matters are proved on the basis of preponderance of evidence. Thus, if on any given issue, the evidence of the claimant be as good as that of the defendant so that there is an equilibrium, it is the party on whom rests the burden of proof that fails. This is because the evidence does not preponderate in such party's favour – **Ezukwu Vs Ukachukwu** (2000) 1 NWLR (Pt 642) 657, **Ukaegbu Vs Nwololo** (2009) 3 NWLR (Pt 1127) 194. This was explained by Omosun, JCA in **Igwe Vs Alozieuwa** (1990) 3 NWLR (Pt 141) 735 at page 751 thus:

> "It is not enough for a party to a case who has the onus of establishing a particular fact to say that his own evidence is just as good as that of his opponent. What the law says he must do to discharge the onus of proof on him is to prove by evidence which

> convinces the court or tribunal of the probability of his case rather than that of the opponent on the point in issue ..."

Now, what the Courts did in the above cases cited on the four scenarios, and indeed what a Court hearing a garnishee proceeding should do when a garnishee files an affidavit to show cause, is to evaluate the depositions in the affidavit upon which the Garnishee Order Nisi was granted vis-à-vis the depositions in the affidavit to show cause and determine on a preponderance of evidence if there is a real dispute of liability – **Sterling Bank Plc Vs Gamau** *supra*, **Fidelity Bank Plc Vs Gamau** *supra*. This point was succinctly made by this Court, per Abba-Aji, JSC, in **First Bank of Nigeria Plc Vs Yegwa** (2022) LPELR 59630(SC) thus:

> "The proviso "the garnishee shall appear before the Court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid" basically rests on the law of evidence based on the preponderance of evidence available or which one tilts the pendulum of evidence. Since it is a case between the judgment creditor and the judgment debtor, the Court is interested in knowing whether the judgment debtor is capable or not to settle the judgment creditor with the money of the judgment debtor in the custody of the garnishee. Although often, the garnishee will want to favour and protect the judgment debtor, the Court is wary that the judgment creditor gets his settlement or reaps the fruit of his judgment. Thus, Court must also advocate and stand for the judgment creditor. In hearing the case of the garnishee vis-a-vis that of the judgment creditor and judgment debtor, the Court is duty bound to be careful, meticulous and weigh the case on the balance of probability."

And the evaluation of the evidence must be done with the understanding that the primary onus of proof in the garnishee proceedings is on the judgment creditor, and not on the garnishee. Since the essence of a garnishee order is to attach any debt owing to the judgment debtor from

any person or body within the jurisdiction of the court to satisfy the judgment debt, a judgment creditor cannot by means of attachment, stand in a better position as regards the garnishee than the judgment debtor did; "he can only obtain what the judgment debtor could honestly give him" – **Re: General Horticultural Co, *ex parte* Whitehouse** (1886) 32 Ch. D 512, **United Bank for Africa Vs France Appro SAS** (2015) LPELR 40394(CA). The judgment creditor must thus show by credible evidence that monies belonging to the judgment debtor are indeed in the hands of the garnishee.

Evaluation of evidence entails a trial court placing the totality of the testimonies of both parties on an imaginary scale. One side of the scale will contain the evidence of the plaintiff while the other side will harbor the evidence of the defendant. The court must then weigh them together to see which side is heavier than the other. This is in terms of quality, not quantity. To help the court in this regard, it should consider whether the evidence led by a party in its totality is relevant, admissible, credible, conclusive and more probable than that adduced by the other party. Once these considerations fall into line, the court will then apply the relevant laws to the facts or evidence adduced, in order to reach a decision. The trial Court must not impair the evidence either with its personal knowledge of matters not placed and canvassed before it or by inadequate evaluation, and its duty is to reach a decision only on the basis of what is in issue and what has been demonstrated upon the evidence by the parties and supported by law. The observance of the procedure for evaluation of evidence is crucial to arriving at a just decision. Its breach will most likely lead to a perverse decision – **Mogaji Vs Odofin** (1978) 4 SC 91, **Adeleke Vs Iyanda** (2001) 13 NWLR (Pt 729) 1, **Okoko Vs Dakolo** (2006) 14 NWLR (Pt 1000) 401, **Tippi Vs Notani** (2011) 8 NWLR (Pt 1249) 285, **Momoh Vs Umoru** (2011) 15 NWLR (Pt 1270) 217.

In the present action, the entire case of the first Respondent in praying for a garnishee order against the Appellant was that second to the fourth

Respondents, the judgment debtors had funds in their accounts with the Appellant under the Treasury Single Accounts (TSA) policy of the Federal Government of Nigeria and that the funds in the accounts of the judgment debtors with the Appellant were sufficient to satisfy the judgment sum. The first Respondent did not state the details of the accounts of the judgment debtors with the Appellant. It was on the basis of these depositions that the trial Court made the Garnishee Order Nisi **"attaching the sum of N50 Million due to the first Respondent and standing to the credit of the judgment debtors in their accounts with the Garnishee Bank, being the Central Bank of Nigeria (CBN) under the Treasury Single accounts Policy"** and directing the Appellant to show cause why it should not pay over the attached sum in the accounts of the judgment debtors to the judgment creditor.

In response to the depositions of the first Respondent, and in obedience to the directive of the trial Court, the Appellant deposed in its affidavit to show cause that it does not maintain any account in the name of the judgment debtors and that as such it cannot attach the sum of N50 Million and/or pay over any such sum to the first Respondent from the accounts of the judgment debtors. The records of appeal show that the lower Court, in the course of re-hearing the garnishee proceedings, did not evaluate the depositions of the first Respondent in support of the garnishee order vis-à-vis the depositions in the affidavit of the Appellant to show cause. All that the lower Court did was to consider the depositions of the Appellant alone and to find that it amounted to a mere denial, without specifics, and that it was mischievous and affront to the administration of justice. The lower Court took judicial notice of the fact that under the Federal Government Single Treasury Account (TSA) policy, all the Government Ministries, MDAs accounts are now with the Appellant and that the Appellant cannot be allowed to simply deny that it is not maintaining any account for the Judgment Debtors who are MDAs.

What is obvious is that had the lower Court properly evaluated the depositions of the first Respondent on the garnishee proceedings, it

would have found that they also contained mere assertions, without specifics. The lower Court would have also found that the assertion of the first Respondent that the judgment debtors have accounts with the Appellant under the Treasury Single Accounts (TSA) policy of the Federal Government of Nigeria was incorrect. The Treasury Single Accounts (TSA) policy of the Federal Government of Nigeria was made in respect of Ministries, Departments and Agencies (MDAs) of the Federal Government; this fact was accepted by the lower Court and all the Counsel to the parties. The judgment debtors are (i) the Inspector General of Police, (ii) The Commissioner of Police FCT and (iii) the Officer in Charge, Intelligence Response Team, Special Anti-Robbery Squad of the Nigeria Police Force. It is obvious, and the lower Court would have found, that the three judgment debtors are not Ministries, Departments or Agencies of the Federal Government of Nigeria and cannot be referred to as MDAs to qualify as persons that the Appellant would maintain accounts for in their names under the Treasury Single Accounts (TSA) policy of the Federal Government of Nigeria.

The lower Court would have further found that, in view of the fact that the none of the judgment debtors can be described as MDA, the first Respondent needed to have done much more than the mere assertions contained in his affidavit to show that indeed the Appellant maintained accounts in the names of the judgment debtors under the Treasury Single Accounts (TSA) policy of the Federal Government of Nigeria. The lower Court would not have impaired its reasoning with the unnecessary voyage it embarked on via Section 124 of the Evidence Act to look for facts that were not relevant to the resolution of the issue before it. It would have been obvious to the lower Court that neither the Nigeria Police Force nor the Police Service Commission, the possible employers of the judgment debtors, was a party to the action in which the first Respondent obtained judgment and/or a party to the garnishee proceedings. The lower Court would have found that the case of the Appellant that it did not maintain any account in the names of any of the judgment debtors was more

probable and credible and that it preponderated over the mere assertions of the first Respondent otherwise.

It is without doubt that the findings and conclusion of the lower Court that the judgments debtors, the second to the fourth Respondents, are MDAs and that as such the Appellant maintained accounts in their names under Treasury Single Accounts Policy of the Federal Government of Nigeria run counter to the evidence placed before it and they were arrived at because the lower Court took account of matters which it ought not to have taken into account and shut its eyes to the obvious. The decision of the lower Court is a classic example of a perverse decision – **Ifenne Vs Ahmadu Bello University** (2023) 7 (Pt 1883) 327, **Oladipo Vs Kalejaiye** (2023) 14 NWLR (Pt 1903) 153, **Ani Vs State** (2024) LPELR 62746(SC), **Aghwarianovwe Vs Peoples Democratic Party** (2024) 1 NWLR (Pt 1918) 45. It is settled law that an appellate Court is enjoined and obligated to set aside a perverse decision of a lower Court – **Ekpenyong Vs Nyong** (1995)2 SC 71, **C. D. C (Nig) Ltd Vs SCOA (Nigeria) Ltd** (2007) 6 NWLR (Pt 1030) 300, **State Vs Solomon** (2022) LPELR 55598(SC). The issue for determination is resolved in favour of the Appellant.

This Court thus finds merit in the appeal and it is allowed. The judgment of the Court of Appeal sitting in its Abuja Division and delivered in Appeal No CA/A/111/2019 on the 4th of December, 2020 is hereby set aside, the garnishee proceedings commenced by the first Respondent is dismissed and the Appellant is discharged. The parties shall bear their respective costs of the appeal.

Certified True Copy
Barr Tyanka T. Felix Jeme. 3/2/25
REGISTRAR
SUPREME COURT OF NIGERIA

HABEEB ADEWALE OLUMUYIWA ABIRU
JUSTICE, SUPREME COURT

Chief Emeka Ngige, SAN, and A. J. Owonikoko, SAN,
with Kofo AbdusSalam, Onyeka Obiajulu,
J. J. Odeh, Chiamaka Nwanosike and
David Alao — for the Appellant

Eko Ejembi Eko, SAN, with I. W. Zom,
T. S. Terver- Ubwa and F. O. Alli — for the 1st Respondent

Akin Adewale with Julie Ogunsuyi — for the 2nd – 4th Respondents