IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 24TH DAY 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 ADUMEIN	JUSTICE, SUPREME COURT
HABEEB ADEWALE ABIRU	JUSTICE, SUPREME COURT

SC/CV/268/2021

BETWEEN:

CENTRAL BANK OF NIGERIA — APPELLANT

AND

1. INALEGWU FRANKLINE OCHIFE
2. THE INSPECTOR GENERAL OF POLICE
3. THE COMMISSIONER OF POLICE, FCT
4. O/C INTELLIGENCE RESPONSE TEAM, SPECIAL ANTI ROBBERY SQUAD (SARS) NIGERIAN POLICE FORCE

— RESPONDENTS

JUDGMENT

(DELIVERED BY HELEN MORONKEJI OGUNWUMIJU, JSC)

I have had the privilege of hitherto reading the lead judgment of my learned brother **HABEEB ADEWALE ABIRU, JSC**. I agree that the appeal be allowed in part and I wish to depart from his Lordship's views on certain preliminary points of law in this case. I will consequently determine an issue not settled in the lead judgment.

Certified True Copy
Barr Fyanka T. Felix Jome. 3/2/25
REGISTRAR
SUPREME COURT OF NIGERIA
Office

This is an appeal against the judgment of the Court of Appeal, Abuja Division delivered on the 4th day of December, 2020 Coram: Stephen Adah, Yargata B. Nimpar and Elfrieda O. William – Dawodu JJCA which dismissed the appeal of the Appellant in appeal number: CA/A/111/2019.

The 1st Respondent commenced garnishee proceedings against the Appellant vide a motion ex parte in the Federal High Court (trial Court) in a bid to enforce the judgment obtained against the 2nd – 4th Respondents in Suit No: FHC/ABJ/CS/156/2018 delivered on 10/10/2018.

On the 10th day of December, 2018, the trial Court granted a Garnishee Order Nisi which in effect directed the Appellant to show cause why it should not pay the sum of N50,000,000.00 (Fifty Million Naira Only) being the judgment sum awarded against the 2nd – 4th Respondents and the matter was adjourned to 11th January, 2019. The Appellant upon being served with the order nisi filed a 9 paragraph affidavit to show cause on 7th January, 2019 disputing liability, to wit: that it maintained no account(s) in the name of the 2nd – 4th Respondents. The 1st Respondent filed no counter affidavit to controvert or challenge the Appellant's position. The trial Court in its ruling delivered on 21st January, 2019 however rejected the Appellant's affidavit to show cause on the ground that it was filed out of time and no step was taken to regularize it. It then proceeded to pronounce the garnishee order absolute. Dissatisfied with the trial Court's decision, the Appellant appealed to the Court below vide a Notice of Appeal filed on 6th

February, 2019 containing three grounds of appeal one of which complained of lack of jurisdiction of the trial Court to entertain the garnishee matter in the first place on the ground that consent of the Attorney-General of the Federation was not sought and obtained before the garnishee proceedings were commenced which is a statutory pre-condition for assuming jurisdiction over the matter.

In its judgment delivered on 4th December, 2020, the Court below agreed with the Appellant's contention and held in effect that the trial Court was in error when it held that the Appellant's affidavit to show cause was filed out of time there being no law specifying the time the Appellant should show cause. The Court below however, invoked Section 15 of the Court of Appeal Act to consider the cause shown by the Appellant and held that it was not satisfactory, and that pursuant to Section 124 of the Evidence Act, 2011, it took judicial notice of the fact that the 2nd – 4th Respondents were MDAs (Ministries, Departments and Agencies) whose accounts were warehoused with the Appellant under the Federal Government Treasury Single Account Policy. Turning to the issue of lack of jurisdiction occasioned by the absence of consent of the Attorney-General of the Federation, the Court below held that where the judgment debtor was not disputing the judgment debt, Appellant being a garnishee had no business contesting the trial Court's jurisdiction.

Consequently, the Court below held that it found no reason to void the trial Court's grant of the Garnishee Order Absolute and therefore dismissed the appeal. Dissatisfied with the decision of the Court below,

the Appellant by Notice of Appeal containing four grounds of appeal filed on 12th January, 2021, thereafter appealed to this Court.

In the Appellant's brief settled by Babajide Babatunde, Esq., the Appellant distilled four issues for determination as follows:

1. 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. (Distilled from ground 1 of the Notice of Appeal).
2. Whether the lower Court ought to have invalidated the garnishee order absolute pronounced by the trial Court without consent of the Attorney-General of the Federation which is a condition precedent for exercising jurisdiction over the garnishee proceedings. (Distilled from ground 2 of the Notice of Appeal).
3. 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, 2016 to determine the garnishee matter. (Distilled from ground 3 of the Notice of Appeal).
4. Whether the lower Court was right or justified in relying on Section 124 of the Evidence Act, 2011 to reject Appellant's denial of having accounts in judgment debtor's names and to hold that judgment debtors are MDAs (Ministries, Departments and Agencies) whose

accounts are with Appellant under the Federal Government Treasury Single Account Policy. (Distilled from ground 4 of the Notice of Appeal).

In the 1st Respondent's brief settled by Eko Ejembi Eko, SAN, the 1st Respondent distilled 3 issues for determination as follows:

1. 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 proceeding.
2. Whether the lower Court was right in relying on Section 124 of the Evidence Act, 2011 to reject Appellant's denial of having accounts in the names of the judgment debtors and to hold that the judgment debtors are MDAs (Ministers, Departments and Agencies) whose accounts are with the Appellant under the Treasury Single Account Policy.
3. Whether the Appellant has shown sufficient reason why the Supreme Court should set aside the concurrent judgments of both the trial and the Appellate Court).

In the 2nd – 4th Respondents' brief settled by Akin Adewale, Esq. both issues distilled are similar to issue 2 of the Appellant and issue 1 of the 1st Respondent. Learned Counsel for the 2nd – 4th Respondents filed a brief which showed that their interests align with that of the Appellant and the brief for all intents and purposes attacks the judgment of the

Court below in support of the Appellant. The law does not allow the 2nd – 4th Respondents to take such a stand. A Respondent's brief may only support the judgment appealed against. 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, but not the entire judgment, on a point he considers fundamental, he can challenge same by filing a Cross Appeal. Generally, where the Respondent supports the judgment but wants it affirmed on other grounds than those relied on by the Court below, he must file a Respondent's Notice. See **HUSSAINI ISA ZAKIRA v. SALISU DAN AZUMI MUHAMMED & ORS (2017) LPELR-42349 (SC); CAMEROON AIRLINES v. OTUTUIZU (2011) 4 NWLR (pt. 1238) pg. 512; KAYILI v. YIIBRIK (2015) LPELR-24323 (SC).** However, in the Supreme Court there is no window to file a Respondent's Notice. Thus, in this Court, the Respondent can only file a Cross Appeal.

In the circumstances, the 2nd – 4th Respondents' brief not having fulfilled any of its purpose by being a Cross Appellant's brief, while opposing the judgment of the Court below, is hereby struck out.

In the lead judgment, issues 1 & 2 as formulated by the Appellant in this appeal were discountenanced and struck out. This position in the lead judgment was predicated on the finding that the said issues were incompetently raised at the Court below and in this Court having not been raised as a procedural issue at the trial. As set out above, issues

1 & 2 in the Appellant's brief relate to the question as to whether the garnishee proceedings at the trial Court was competent on account of the 1st Respondent's failure to seek and obtain the Attorney-General of the Federation's consent before commencing the proceedings. From the record of appeal, Mr. Eko, Esq., (as he then was) argued the motion ex parte for Garnishee Order Nisi on 10/12/18 at the trial Court. In the course of his written address in support of the motion, he raised the issue himself following which the trial Court granted the Order Nisi. On page 10 – 11 of the Record, Mr. Eko in the written address stated as follows:

> *"Recent authorities of the apex Court of the land have also held that in a garnishee proceedings where funds of government agencies such as the judgment debtors are sought to be garnished the consent of the Attorney-General of the Federation is no longer a prerequisite as the Court held that the relationship that exists between the CBN and government agencies is merely that of banker customer relationship and as such the funds in custody of the banker can be garnished to fulfil a judgment debt via garnishee proceedings. See CENTRAL BANK OF NIGERIA v. INTERSTELLAR COMMUNICATIONS & ORS (UNREPORTED) at PP.46-77, the Supreme Court per OGUNBIYI JSC".*

Mr. Eko also made this point orally as recorded by Tsoho J. (as he then was) in the proceedings on the Order Nisi held on 10/12/18 on page 35 of the Record. His words were:

> *"In making this application, we wish to emphasize that the Central Bank of Nigeria in the circumstances is only acting as a Banker in a Banker-Customer relationship and the consent of the HAGF is required for the enforcement of Judgment. We rely on the case of CBN vs INTERSTELLA COMMUNICATION & ORS." (Unreported) per Ogunbiyi, JSC.*

However, the learned trial Judge did not at any point in the Ruling on the Order Absolute give an opinion on that point. The ruling was based on the fact that the affidavit to show cause was out of time and consequently had to be discountenanced. Tsoho J. (as he then was) stated as follows:

> *"I therefore endorse the submission of Eko Ejembi Eko Esq. of Learned Counsel for the Applicant that the Garnishee's Affidavit To Show Cause was filed well outside the time stipulated by the Rules of Court. As no step has been taken to regularize same, it is incompetent and disregarded in this proceedings. In effect, the averments in the affidavit in support of the Applicant's Motion Exparte for Garnishee Order Nisi is deemed not contested".*

Federal Court issued the Garnishee Order Absolute on 21/1/2019, the Appellant filed a notice of appeal wherein it raised the issue of the failure of the Respondent to obtain the AGF's consent before the garnishee proceedings was commenced in its Ground 3 on pages 45-50 of the record in the said notice of appeal. Issues were joined by the parties in their respective briefs of argument filed at the Court below on this point. Appellant's issue 3 in its brief at the Court below was formulated from this Ground 3 while the 1st Respondent's issue 2 was predicated on the said Ground 3. None of the Respondents at the Court below objected to the competence vel non of the said issue 3 as formulated in the Appellant's brief or the said Ground 3 in the Notice of Appeal against the trial Court's decision. Accordingly, the Court below went on to determine the issue in a manner that made its opinion inchoate on the specific point submitted to it by the parties for determination as follows:

"In the instant case, it is not on record that the judgment creditor or judgment debtor 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 appellant 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".

However, the correct finding of the Court below was not the specific point put before it.

Before this Court in this appeal, none of the Respondents have objected to the competence of issues 1 & 2 in the Appellant's brief before the Court which is predicated on Ground 2 of the Notice of Appeal which has been struck out in the lead judgment. Both parties have joined issues on this point in their briefs herein. No doubt, ab initio, it is important to point out that it has always been the position of the Nigerian Courts to adopt the adversarial mode of jurisprudence in the determination of disputes submitted to it. The Court does not make a habit of making out a case on behalf of any side. Rather, it focuses on and resolves the issues presented to it by the parties. See **SODIPO v. LEMNINKAINEN & ANOR (1986) LPELR-3087 (SC), EHOLOR v. OSAYANDE (1992) LPELR-8053 (SC).**

As none of the parties argued that issues 1 & 2 in the Appellant's brief before us were incompetent, I think it would amount to a breach of the Appellant's right to fair hearing to discountenance and strike out the said issues without giving it an opportunity to defend their competence at least at the hearing of this appeal. See **CHITRA KNITTING v. AKINGBADE (2016) LPELR-4043 (SC).**

As I pointed out earlier, these issues were first raised by the 1st Respondent at the trial Court when it sought the Garnishee Order Nisi. I am therefore of the view that they were competently raised at the Court below and subsequently in this Court.

On a second point of law, the Sheriffs and Civil Process Act is a substantive law. The adjectival Law attached to it is the Judgment Enforcement Rules made pursuant to it. The Appellant is not challenging the jurisdiction of the Court on this issue on the basis of the procedural rules in the Judgment Enforcement Rules, but on the basis of the substantive law as stated in Section 84 of the S&CPA. Failure to adhere to substantive law in initiating an action even where not raised at the trial Court can be raised as a matter of jurisdiction at any time in the appellate process. This is a matter of inherent jurisdiction to hear the case without the consent of the Attorney-General which tantamounts in law to the fact that the garnishee action is statute barred by Section 84 of the S&CPA. Section 84 of the S&CPA debars by a condition a right from being enforced and is not merely a rule or mode of how to enforce the right. It is thus a substantive issue of jurisdiction. Usually the issue of procedural jurisdiction when not raised timeously can be ignored by the Courts while the issue of substantive jurisdiction as envisaged by the very wordings of Section 84 of the S&CPA cannot be waived. The question of defect in the procedure adopted by a party is different from one of substantive law. See **MOBIL PRODUCING v. LASEPA & ORS (2002) LPELR-1887 (SC).**

The Court would as a matter of policy strike out any issue of procedural jurisdiction not timeously raised by any party as an attempt to over reach the other side when there appears to be no prior complaint on the issue from the said adverse party. See **A.G. KWARA & ANOR v. ADEYEMO & ORS (2016) LPELR-41147 (SC), ADEGOKE MOTORS v. ADESANYA (1989) 3 NWLR (pt. 109) pg. 255.**

The position in relation to procedural law is that where a statute gives a party a benefit, he may waive it or the Court can presume he has waived it thereby conferring jurisdiction on the Court to proceed with the matter. Where there is tardiness to take advantage of a benefit in a rule of Court, it is taken as waived and the Court will not allow the party to raise the matter at will in future. That is not the position here. I am of the view that issues 1& 2 being properly raised by the parties in this Court should be determined by this Court and I will do so anon.

Issue 1 by the Respondent is subsumed in issue 2 raised by the Appellant. 1st Respondent issue 2 has also been raised by the Appellant in its issue 4. 1st Respondent issue 3 is an omnibus issue which speaks to the general determination of the appeal.

In the determination of this appeal, I will consider issues 1 and 2 as raised by the Appellant together while I will consider issues 3 and 4 as distilled by the Appellant separately in view of the questions of law posed therein.

Learned Appellant's Counsel in addressing the first two issues submitted that the Court below was in error when it held that a Garnishee was not entitled to raise the issue of jurisdiction in garnishee proceedings when the judgment debtor was not contesting the judgment that pronounced the debt. Counsel submitted that garnishee proceedings are separate and distinct proceedings although incidental to the judgment that pronounced the debt, they are proceedings *sui generis* with their own special procedure and there cannot be any point of law as fundamental as the issue of jurisdiction. Counsel cited **DENTON – WEST v. MUOMA (2008) 6 NWLR (Pt. 1083) 418 at 442,** and **CENTRAL BANK OF NIGERIA v. AUTO IMPORT EXPORT (2013) 2 NWLR (Pt. 1337) 78 at 125 – 126, NITEL PLC v. I.C.I.C (DIRECTORY PUBLISHERS) LTD (2009) 16 NWLR (Pt. 1167) 356 at 387, OGIDI v. OKOLI (2014) LPELR-22925 (CA), NWANKWO v. YAR'ADUA (2010) 12 NWLR (Pt. 1209) 518 at 560, ELABANJO & ANOR v. DAWODU (2006) 6-7 SC 24 at 36.**

Counsel further submitted that the Court below was wrong not to have invalidated or voided the garnishee order absolute pronounced against the Appellant when the prior consent of the Attorney-General of the Federation was not sought and obtained before the garnishee proceedings was taken out. Counsel argued that it is beyond cavil that garnishee proceedings are governed by the Sheriff and Civil Process Act Cap S6, Laws of the Federation of Nigeria, 2004 hereinafter referred to

as the S&CPA, and Section 84 therein is very clear and unambiguous with regards to the procedure for attaching money in the custody or under the control of a public officer in his official capacity or in *custodia legis* in satisfaction of a judgment debt. Counsel submitted that by virtue of Section 84 of the S&CPA, the jurisdiction of the trial Court cannot be validly activated with a view to making garnishee orders for the attachment of funds in the custody or under the control of a public officer unless the prior consent of the relevant Attorney-General is sought and obtained. Counsel cited **ELABANJO v. DAWODU (SUPRA), FIDELITY BANK v. MONYE (2012) LPELR-7819 (SC), MADUKOLU & ORS v. NKEMDILIM & ORS (1962) 2 SCNLR 341, CENTRAL BANK OF NIGERIA v. KAKURI (2016) LPELR-41468 (CA), CENTRAL BANK OF NIGERIA v. INTERSTELLA COMMUNICATIONS LTD (2017) LPELR-43940 (SC), (2018) 7 NWLR (Pt. 1618) 294.**

Counsel further submitted that the Appellant within the context of Section 84 of the S&CPA qualifies as a "public officer". Counsel submitted that the decision of the trial Court appealed against is a Garnishee Order Absolute and the record before this Court is bereft of the consent of the Attorney- General of the Federation granted to the 1st Respondent to initiate the garnishee proceedings against the Appellant.

Learned Senior Counsel for the 1st Respondent submitted that the Appellant i.e. the Central Bank of Nigeria for the purpose of a garnishee

application stands as a "banker" and not a "public officer". Counsel argued that from the provisions of Section 2(e) and Section 36(1) and (3) of the Central Bank Act, it is clear that the Appellant simply plays the role of a banker to the Federal Government that is; it receives and disburses Federal Government moneys and keeps account thereof among other duties, it also appoints other banks to act as its agents for collection and payment of Federal Government moneys. These obviously are the functions of a bank. This Court had also held in **BARCLAYS BANK OF NIGERIA LTD v. CBN (1976) LPELR-751(SC) (P 15, para A)** that:

> **"Bank is also defined as Central Bank of Nigeria and any bank licensed under the Banking Decree 1969."**

Learned Senior Counsel for the 1st Respondent also contended that the Appellant being a Bank must be subject to the same treatment/practice applicable to commercial banks in the course of a garnishee proceedings. Consequently, for the purpose of judgment enforcement it cannot be recognized as a "public officer" under Section 84 of the S&CPA. Counsel cited **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS (2017) LPELR-43940(SC) (pp. 79-81, paras B-D).** Senior Counsel for the 1st Respondent urged this Court to hold that the Appellant is not a public officer within the contemplation of Section 84 of the S&CPA for the purposes of a garnishee proceedings as to oust the jurisdiction of the trial Court.

In respect of the contention by the Appellant that the trial Court lacked jurisdiction ab initio since the 1st Respondent had failed to fulfil the condition precedent to activate its jurisdiction by seeking the consent of the Attorney General of the Federation, Learned Senior Counsel argued that the Appellant's Counsel completely misconceived the ratio in **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS (SUPRA).** Senior Counsel argued that in that case, this Court held that the Appellant is not a "public officer" in the context of Section 84 of the S&CPA. Senior Counsel argued that the CBN acts as a "Banker" to provide economic and financial advice to the Federal Government and that the Central Bank also acts as a Banker to the Federal Government funds with respect to government funds in its custody. Senior Counsel also submitted that a community reading of Sections 1 (1) & (3), 287 and 318 of the 1999 Constitution (as altered), in conjunction with Section 18 of the Interpretation Act puts it beyond any doubt that the offices of both the Attorney General of the Federation, and the Central Bank of Nigeria are amongst the authorities and persons referred to by the provisions of the constitution to perform their duties/functions of enforcing the decisions of the Federal High Court of the Federation and the State High Courts without any other need to seek permission from another authority. Senior Counsel argued that even if Section 84 of the S&CPA applies, then the statute to the extent of its inconsistency with the 1999 Constitution (as altered) being the grundnorm is null and void. Learned Senior Counsel urged the Court to strike down as unconstitutional the provisions of Section 84 of the S&CPA.

My Lords, no doubt, garnishee proceedings though a method of enforcement of money judgment are judicial proceedings properly so-called since they have the features of any other judicial proceedings which include an orderly presentation of evidence by parties in support of their respective claims and argument in support of particular interpretations of the law after which the Court makes a determination of the factual and legal issues.

There is no doubt that garnishee proceedings being judicial proceedings stricto sensu and being separate from the proceedings that pronounced the debt, the issue or question of jurisdiction inexorably comes to play in the proceedings and it is irrelevant whether or not the judgment debtor is contesting the judgment.

It is a well settled and fundamental principle of law that a Court must have jurisdiction over any proceedings before it, otherwise it labours in vain and all it does amounts to a nullity.

In **SHELIM & ORS. v. GOBANG (2009) 5-8 SC (Pt. II) 174 @ 186,** this Court, per Fabiyi JSC, pungently reiterated the law thus.

> **"Issue of jurisdiction is very paramount and crucial. It can be raised at any stage of the proceedings and even on Appeal before this Court... Issue of Jurisdiction can be raised in any form by any of the parties or suo motu by**

the Court. See Westminster Bank Ltd v. Edwards (1942) 1 All ER 470 at 474."

In ELABANJO & ANOR v. DAWODU (2006) 6-7 SC 24 36, this Court while affirming its earlier decision in PETROJESSICA ENTERPRISES LTD v. LEVENTIS TECHNICAL CO. LTD (1992) 5 NWLR (Pt. 244) 675 held as follows:

> "It is quite clear from these decisions of this court that where at any stage sufficient facts or materials are available to raise the issue of jurisdiction, or that it has become apparent to any party to the action that it can be canvassed, there is no reason why there should be any delay in raising it. In Petrojessica Enterprises Ltd v. Leventis Technical Co. Ltd (1992) 5 NWLR (Pt. 244) 675 at 693, Belgore, JSC, put it plainly thus: *'Jurisdiction is the very basis on which any tribunal tries a case; it is the lifeline of all trials. A trial without jurisdiction is a nullity xxxx. This importance of jurisdiction is the reason why it can be raised at any stage of a case, be it at the trial, on appeal to Court of Appeal or to this Court; afortiori the court can suo motu raise it. It is desirable that Preliminary Objection be raised early on the issue of jurisdiction; but once it is apparent to any party that the court may not have jurisdiction'* it can be raised even viva voce as in this case. It is always in the interest of justice to raise issue of

jurisdiction so as to save time and costs and to avoid a trial in nullity"

Also, in **JERIC NIGERIA LIMITED v. UNION BANK OF NIGERIA PLC (2000) 12 SC (Pt. II) 133 at 137**, it was held thus:

> "There is no doubt that in our adversary system of adjudication the question of jurisdiction is very fundamental. In fact it is so fundamental that the adjudicating Court should determine the issue first before starting any proceedings. And if the Court proceeded and it was found that the Court had no jurisdiction in the matter all the proceedings however well conducted amount to nothing and are a nullity. It is also trite law that the issue of jurisdiction can be raised at any time by a party even on appeal in the Supreme Court as was done in this case".

See also **LABOUR PARTY v. INEC (2009) LPELR-1732 (SC); APGA v. ANYANWU [2014] LER. SC. 201/2013; NIGERIAN DEPOSIT INSURANCE CORPORATION v. CENTRAL BANK OF NIGERIA (2002) LPELR-2000 (SC), OMOKHAFE v. ELUGBE (2004) 11-12 SC 60 at 65.**

The settled point of jurisdiction having been again elucidated upon, the next issue is whether the Appellant is a "public officer" within the meaning of Section 84 of the S&CPA. In **C.B.N v. INTERSTELLA**

COMMUNICATIONS LTD (SUPRA), the latest authority on this point, this Court held on pages 344 – 347 of the NWLR per Ogunbiyi JSC in the lead judgment as follows:

> "It should be noted clearly that the principle underlying securing the AGF's consent as prescribed in section 84 SCPA is to avoid embarrassment on him of not having the prior knowledge that funds earmarked for some purposes have been diverted in satisfaction of a judgment debt, which the government may not know anything about. See the persuasive authority of the case of Onjewu v. K.S.M.C.I (2003) 10 NWLR (Pt. 827) 40 at 89.
>
> The learned counsel for the appellant made reference exhaustively to section 84(1) of the SCPA and submitted emphatically that the Attorney-General of the Federation is the appropriate officer from whom consent must be obtained in respect of money in the custody of a public officer in the public service of the Federation. Counsel submits further that the appellant as well as its officials have been held to be public officers and relied on the case of CBN v. Adedeji (supra) wherein the lower court followed the decision of this court in Ibrahim v. JSC under reference. For the purpose of clear understanding, it is expedient that the provision of section 84(1) of the SCPA is hereby reproduced as follows:

"Where money liable to be attached by garnishee proceedings is in the 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 case of money in custodia legis, as the case may be."

I have indicated earlier in the course of this judgment that the case under consideration herein is very peculiar and the circumstance cannot be fitted within the general interpretation of section 84 of SCPA. Again the case of Onjewu v. KSMCI (supra) is well under reference.

Furthermore and as rightly submitted on behalf of the 1st and 2nd respondents, certain qualifying conditions must be met for a case to come under the purview of section 84 of SCPA. In other words, justice would demand that the AGF must be a neutral/nominal party in the transactions and proceedings giving rise to the application for order nisi and not him being the debtor. It is well and explicit on the facts of this case that the AGF has all along held out himself to be an active participant in the several stages of negotiations, transactions and even part

payment of the debt owed. Paragraph 13 of the affidavit in support of the AGF's application at page 76 of the record is under reference as admission against interest. In the circumstance, the AGF cannot be a neutral/nominal party in this case.

It is right to say that by implication section 84 of the SCPA, which stipulates "consent" had already been fully complied with as the government itself negotiated the terms, and took steps to settle the debts, before it later reneged on full satisfaction thereof. The most potent factor, which makes section 84(1) of the SCPA inapplicable herein is because the Attorney-General is the debtor and has been sued in that capacity. With the AGF being the judgment debtor therefore, will it not be absurd to require that his consent should be sought especially having admitted that he had taken the move by paying part of the debt in question? The appellant's contention, understanding and interpretation of Section 84(1) of SCPA is a total misconception, I hold. The interpretation in my view would run against the application of natural justice, which could not have been the intendment of the legislature.

In the present transaction, and as rightly submitted by the 1st and 2nd respondents' counsel, the appellant is only

a banker to the 3rd and 4th respondents and has in that capacity made payments to the 1st and 2nd respondents based on the consent of the 4th respondent. It could not have been the intention of the legislature that Section 84(1) of the SCPA should be used as an umbrella for the 3rd and 4th respondents to evade a debt owed, by simply putting its funds in the hands of the appellant; it is not also the intention that a judgment creditor should first obtain the consent of the debtor before proceeding against the debtor to recover his money.

The submission by the learned counsel for the appellant would certainly be counter-productive. It will also defeat the doctrine of the Rule of Law, which, as rightly argued by 1st & 2nd respondents, counsel, is the hallmark or our democracy. This court in NPA v. CGFC SPA (1974) NLR (Pt. 11) 463 held that a section of a statute should not be given an undue emphasis, that it did not posses, and that a statute cannot be applied in a situation where its effect is clearly contrary to the intendment of the legislature in passing that law. Again and contrary to the submission advanced by the learned counsel for the appellant, the consent of the AGF had all along been obtained. Consequently, the garnishee proceedings against the appellant was rightly commenced and I so hold.

The other leg of the argument is where the appellant's counsel holds out the CBN as a public officer and relied on the case of Ibrahim v. JSC (supra) in particular.

In the case under consideration, I have ruled that the relationship between the appellant and the 3rd and 4th respondents is that of banker and customer relationship. In other words and as rightly argued by 1st and 2nd respondents' counsel, the appellant is not a public officer in the context of section 84 SCPA, when regard is had to the history of this appeal. Section 84 has been reproduced earlier in the course of this judgment.

It is apparent herein, on the facts of this case that the CBN acts as a banker to the Federal Government Funds with respect to government funds in its custody. Section 2(e) of the CBN Act provides thus:

> "Act as a banker and provide economic and financial advice to the Federal Government."

Section 36 of the CBN Act also provides:-

> "The bank shall receive and disburse Federal Government money and keep accounts thereof."

The appellant does not stand as public officer in this situation. Therefore, it follows that the need to seek the consent of the Attorney-General of Federation does not

arrest. Relevant to this conclusion is again the persuasive authority of CBN v. Ekong (supra) cited also by the appellant's counsel where Fabiyi, JCA (as he then was) held thus on his consideration of the purpose of establishing the CBN:-

> "Generally, it is for overall control and administration of the monetary and banking policies of the Federal Government-----. It is not established for commercial or profit making."

The case of Purification Tech. (Nig.) Ltd. v. A.-G. Lagos State (supra) is also on all fours with the facts of the case under consideration herein. Again the persuasive judgment of the Court of Appeal at pages 679-680 is relevant and said:-

> "There is absolutely no basis for treating government bank accounts any differently from bank accounts of every other juristic personality or customers---------."

In resolving the 4th issue against the appellant, I hold the strong view that the consent of the 3rd and 4th respondents was adequately obtained by the 1st and 2nd respondents, and the garnishee proceedings was competently commenced. Further still on the relationship

> between the 3rd respondent and the appellant in this case, same is purely that of a banker to a customer. Therefore the question of whether the appellant is a public officer, who cannot release funds except the consent of the AGF is obtained, does not apply to the facts and circumstances of this case."

It seems to me that the conclusions of this Court in that case are that:
1) Where the office of the AGF had been involved in arriving at a consent judgment between the parties, the consent of the AGF is taken as given.

2) Where the AGF or the AG of a State is the judgment debtor, then the requirement that the judgment creditor should seek the consent of its debtor cannot be in consonant with the rule of law.

3) Where the cause of action is a judgment debt for which a garnishee order is being sought, and the Central Bank is a party to the Garnishee Proceedings, the Central Bank merely stands as a banker to the Federal Government Funds with respect to the government funds in its custody and not as a public officer in such a situation and there was no need to seek the consent of the AGF in the peculiar circumstances of that case. My Lord Ogunbiyi JSC took pains to explain severally that the facts of that case was the basis of the judgment of this Court.

A thorough reading of the judgment in **C.B.N v. Interstella (supra)** shows that the opinion of the Court was shaped by the peculiar

circumstances of the case and the need to enforce the enthronement of substantial justice to ensure that the state did not renege on its obligations voluntarily entered into by hiding behind legislation, viz Section 84 of the S&CPA. In effect, neither party in this case under review can claim victory based on the opinion of this Court in C.B.N v. Interstella. A judgment should be read in the light of the peculiar facts on which it was based. See **DANGTOE v. CSC PLATEAU STATE (2001) 4 SC pt. 11 pg. 43.**

One of the reasonings in CBN v. Interstella is that where the AG or AGF is merely a neutral/nominal party in the transactions and proceedings giving rise to the application for Order Nisi, and he not being the debtor, the case comes within the purview of Section 84 of the S&CPA. I agree with this reasoning. It is my view that the tacit implication of the judgment of this Court in CBN v. Interstella is that the CBN is ordinarily a "public officer," however, within the context of Section 84 of the S&CPA it may not be regarded as a public officer if the relationship between the CBN and the judgment debtor is nothing more than a banker/customer relationship. I do not think that CBN v. Interstella (supra) has changed the meaning of a "public officer" as interpreted in **IBRAHIM v. JSC (1998) 14 NWLR pt. 584 pg. 1, (1998) LPELR-1408 (SC).** Therein, Iguh JSC held that the term "public officer" has by law been extended to include a "public department" and, therefore, an artificial person, a public office or a public body is a public officer.

The issue of whether a public entity which is an artificial person is a 'public officer' within the meaning of Section 84 of the S&CPA has become a vexed issue and different opinions have been rendered on this point in the lower hierarchy of Courts.

The argument is that artificial entities are not envisaged under Section 84(1) of the S&CPA is reinforced by the definition of "public officer" in the Interpretation Act. Section 18(1) of the Interpretation Act also defines the term "public officer" in these words:

"public officer" means a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or of the public service of a State".

The phrases, "public service of the Federation" and "public service of a State" are both defined by Section 318(1) of the 1999 Constitution. Since we are dealing with CBN, a Federal Government agency, I shall take only the definition of "public service of the Federation".

By Section 318(1) of the 1999 Constitution:

"Public service of the Federation" means the service of the Federation in any capacity in respect of the Government of the Federation and includes service as:

(a) Clerk or other staff of the National Assembly or of each House of the National Assembly;

(b) member of staff of the Supreme Court, the Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja, Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of the Federal Capital Territory, Abuja or other Courts established for the Federation by this Constitution and by an Act of National Assembly;

(c) member of staff of any commission or authority established for the Federation by this Constitution or by an Act of the National Assembly;

(d) staff of any area council;

(e) staff of any statutory corporation established by an Act of the National Assembly;

(f) staff of any educational institution established or financed principally by a Government of the Federation;

(g) staff of any company or enterprise in which the Government of the Federation or its agency owns controlling shares or interest; and

(h) members or officers of the armed forces of the Federation or the Nigeria Police Force or other government security agencies established by law.

So being a member of the public service of the Federation can only mean being a staff in the service of the Federation in any capacity including being a staff of any of the bodies enumerated above. The CBN is an agency of the Federal Government established by an Act of the National Assembly, the CBN Act. It is its staff that qualify as members of the public service of the Federation, not the CBN itself as an institution or agency. Thus, it is the Governor of the CBN that could be sued as garnishee in Garnishee proceedings.

I am of the view that the best that the foregoing argument can generate is that while CBN as an institution may not be a "public officer" if we jettison the ratio in **IBRAHIM v. JSC (SUPRA)** (that is not my conclusion, IBRAHIM v. JSC is in my view still good law) then, the Governor of the CBN is a "public officer" and cannot escape the burden of being a garnishee where appropriate. The argument that an institution like the CBN is not a public officer cannot of itself detract from the purport of Section 84 of the S&CPA to exclude its applicability to the CBN through its principal officers. What I am laboring to say is that whether it is the institution or the principal officers that are brought as garnishee, until the constitutionality of Section 84 of the S&CPA is determined, the provision still remains applicable. On Ibrahim v. JSC being good law to date, I am persuaded also by the arguments of Idris JCA (as he then was) in **CBN v. ACCESS BANK PLC (2022) LPELR-57017 (CA)** where his Lordship stated as follows:

"It would be absurd to interpret a Public Officer in Section 84 of the Sheriff and Civil Process Act in the restrictive sense as interpreted on the basis of Section 318 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) alone, because if so done the safety measures put in there for Government funds would have been defeated. Government funds kept in the Central Bank of Nigeria are not kept with a particular individual who is a public officer. This is why the interpretation given to Public Officer in the case of IBRAHIM v. JSC (supra) by the Supreme Court should apply to all cases. It should therefore enjoy or be given a general application instead of limiting the definition to office holders only".

My Lords, the present settled position of the law in respect of the fact that it is a condition precedent that before a Court can be conferred with jurisdiction to determine any Garnishee proceedings against the government, the consent of the AGF must first be sought and obtained before the said proceeding is initiated were profoundly elucidated in the following cases. See **CBN v. JAY JAY (2020) LPELR-52290 (CA); ZAKARI (2018) LPELR-44751 (CA), FAYOSE v. EFCC (2018) LPELR-4647 (CA); ODE v. A.G. BENUE STATE (2011) LPELR-4774 (CA); UNIVERSITY OF CALABAR TEACHING HOSPITAL v. LIZIKON NIG LTD (2017) LPELR-42339 (CA) at 25; ONJEWU v. KDMCI (2003) 10 NWLR Pt. 827 pg. 40 at 89.**

There seems to be no recent unanimity on this point by the Court below based on the settled precedent. See **CBN v. SHIPPING CO. B.V & ORS (2015) LPELR-24664 (CA); CBN v. OSEKO PETROLEUM & ORS (2018) LPELR-46732 (CA)** and **GTB PLC v. ENGR. MUSA BAMENGA TAFIDA & ANOR (2021) LPELR-56131 (CA).** It appears that the Court below is divided on the applicability of Section 84 and each decision is based on the facts and how each panel wished to apply CBN v. Interstella. See also **ECO BANK NIG PLC v. ADMIRAL ENVIROMENTAL CARE LTD & ORS (2021) LPELR-56130 (CA), CBN v. TRIPPLE C ACQUSITION LTD & ORS (2022) LPELR-57441 (CA), CBN v. NX2 MERCHANT & NIG LTD & ORS (2022) LPELR-57490 (CA), CBN v. MAGPIE TRADING TFZE & ORS (2022) LPELR-57531 (CA), CBN v. KRUGGERBRENT & CO. NIG LTD & ORS (2022) LPELR-57571 (CA), CBN v. ELDER ABEL EZEANYA & ORS (2022) LPELR-57598 (CA), ACCESS BANK PLC v. MR. UGOCHUKWU GERALD IGWE & ANOR (2022) LPELR-57765 (CA), CBN v. ACCESS BANK PLC & ORS (2022) LPELR-57017 (CA), CBN v. ABIODUN ARIGBABUWO OSONOKI & ORS (2022) LPELR-57201(CA).**

As I indicated earlier, even the latest comprehensive judgment of this Court seems to tacitly agree in principle that the AGF's consent is needed to activate the jurisdiction of the Court. While I agree largely with the views of learned 1st Respondent's Counsel, my opinion ultimately on this point has been shaped by the need to take a voyage

into how the Courts have come to agree to this position in order to arrive at the conclusion that the position is still legally tenable.

The judicial precedents which are to the effect that the consent of the AG is required for the commencement of a valid garnishee proceeding are based on two statutory provisions:

1. **Section 84 of the Sheriffs and Civil Processes Act 1945 and**
2. **Section 251(4) of the 1979 Constitution as amended or modified by the Constitution (Suspension and Modification) Decree No. 107 of 1993, and the 2nd Schedule thereof.**

Section 84 of the S&CPA 1945, first promulgated in Nigeria in 1945 before independence provides as follows:

> **(1) Where money liable to be attached by garnishee proceedings is in the 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 case of money in custodia legis, as the case may be.**

(2) In such a case the order of which must be served on such public officer or on the registrar of the court, 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, the Attorney-General of the Federation,

(b) in relation to money which is the custody of a public officer who holds public office in the public service of the State, the Attorney-General of the State.

This was a pre-independence legislation to protect the colonial administration and its coffers. Both the 1960 independence Constitution and the 1963 Republican Constitution did nothing to disturb the provisions of Section 84 of the S&CPA or make it a constitutional provision. It appears that prior to 1979, it was rarely activated and was never subject to judicial interpretation.

This provision obviously held sway until the 1979 Constitution came into force. In **Section 251,** the said Constitution provided:

Section 251(1)(2)(3)

(1) The decisions of the Supreme court shall be enforced in any part of the Federation by all authorities and persons,

by courts with subordinate jurisdiction to that of the supreme Court.

(2) The decisions of the Federal Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the federal court of Appeal.

(3) The decisions of a High Court, and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the High Court and those other courts, respectively.

The wordings of this provisions are clear. They meant that there was no need for the consent of any other authority but the Court to enforce a Court judgment.

Unhappy with this position, the Federal Military Government, in 1993, passed Decree 107. That Decree amended **Section 251 of the 1979 Constitution** by adding a new subsection 4 which read:

(4) **Notwithstanding the provisions of this section, no person shall enforce a judgment against a ministry or extra-ministerial department without the fiat of Attorney-General of the Federation or the Attorney-General of a**

State whether or not he was, in either case, a party to the proceedings.

There is no doubt that the Military Government amended the 1979 Constitution to include this provision because it was aware that the provision of Section 84 of the S&CPA alone was not sufficient to override the clear wordings of Section 6(b) and 251(1) – (3) of the 1979 Constitution. Thus, the provision of Section 84 of the S&CPA had to be given constitutional backing.

It appears that one of the earlier reported case where this amended provision was applied was the decision of the Court of Appeal in **GOVT. AKWA IBOM STATE v. POWERCOM LTD (2005) ALL FWLR (Pt. 246) Pg.1366-1372 @ paras. B-B.** This appeal arose from a set of facts governed by the 1979 Constitution as amended by the said Decree 107. Their Lordships' decision that the Garnishee proceeding was incompetent due to failure of the Applicant to obtain the Attorney General's consent was based on the said subsection 4 of Section 251 of the 1979 Constitution.

Their Lordships held the following views:

> **"Section 251(4) of the 1979 Constitution as amended or modified by the Constitution (Suspension and Modification) Decree No. 107 of 1993, 2nd Schedule, stipulates as follows: of the 1979 Constitution as amended or modified by the Constitution (Suspension and**

State whether or not he was, in either case, a party to the proceedings.

There is no doubt that the Military Government amended the 1979 Constitution to include this provision because it was aware that the provision of Section 84 of the S&CPA alone was not sufficient to override the clear wordings of Section 6(b) and 251(1) – (3) of the 1979 Constitution. Thus, the provision of Section 84 of the S&CPA had to be given constitutional backing.

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Their Lordships held the following views:

> **"Section 251(4) of the 1979 Constitution as amended or modified by the Constitution (Suspension and Modification) Decree No. 107 of 1993, 2nd Schedule, stipulates as follows: of the 1979 Constitution as amended or modified by the Constitution (Suspension and**

Modification) Decree No. 107 of 1993, 2nd Schedule, stipulates as follows:

Section 251: Insert immediately after sub-section 137 a new sub-section (a) as follows:

> (4) *Notwithstanding the provisions of this section, no person shall enforce a judgment against a ministry or extra-ministerial department without the fiat of Attorney-General of the Federation or the Attorney-General of a State whether or not he was, in either case, a party to the proceedings.*

The provisions of the sub-section of the Act is very clear and unambiguous and it is that before a person shall enforce a judgment against a ministry or extra-ministerial department, he has to obtain a fiat from the Attorney-General; and apply and obtaining such a fiat from the Attorney; and applying and obtaining such a fiat from the Attorney-General therefore becomes a condition precedent.

As the learned counsel for the Appellant has rightly argued, a court is competent to exercise jurisdiction only where the case before the court is initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See **MADUKOLU v. NKEMDILIM (1962) 1 All NLR 587.**

The learned Counsel for the Respondents had argued that obtaining a fiat or not having obtained a fiat is not a matter of law and that it is a fact. With due respect to the learned counsel, I entirely disagree with him. The Notice of Appeal is at pages 68 and 69 of the record of proceedings and it reads:

Grounds of Appeal:

Ground 1: Error in law

The learned trial Judge erred in law by ordering (sic) the enforcement of a judgment against the Government of Akwa Ibom State (the appellant0 by way of garnishee order in favour of the respondents without the respondents having first sought and obtained the fiat of the Attorney-General as provided for in section 251(4) of the Constitution of Nigeria as contained in the Constitution (Suspension and Modification) Decree No. 107 of 1993.

Particulars of Errors

1. Ministries and extra-ministerial departments in Akwa Ibom State are what constitutes the Government of Akwa Ibom State and are part and parcel of it.
2. Order a garnishee order on the custodian of the funds of a judgment debtor amounts to enforcement of that judgment against the

judgment debtor; in this case, the Government of Akwa Ibom State.

3. The respondents had not first sought and obtained the fiat of the Attorney-General before applying to enforce the judgment against the appellant by way of garnishee order.

Section 251(4) of the 1979 Constitution was an existing law and the Appellant's complaint is that the learned trial Judge erred in law by ordering enforcement of a judgment against Akwa Ibom State Government in favour of the Respondents who did not first obtain a fiat from the Attorney-General under section 251(4) of the Constitution. Failure to apply the law or wrongly applying a law cannot by any stretch of imagination be a question of fact. It is a question of law. See Amuda vs. Adelodun (1994) 8 NWLR (Pt. 360) 23; Ogbechie vs. Onochie (1986) 2 NWLR (Pt. 23) 484; Nwadike vs. Ibekwe (1987) 4 NWLR (P67) 718.

Further, as I have earlier observed, obtaining a fiat is a condition precedent to the exercise of the jurisdiction in this matter. The ground of appeal raised the issue of the competence or jurisdiction of the court to entertain the matter and it can of course be raised at any stage of the trial or on appeal and even for the first time in Supreme Court. This is so because of the fundamental nature of the issue of jurisdiction and any matter conducted by a court that lacks jurisdiction is

jurisdiction. See Madukolu vs. Nkemdilim (supra); Attorney-General of Federation vs. Code (1990) 1 NWLR (Pt. 128) 500; Tambco Leather Works Ltd vs. Abbey (1998) 12 NWLR (Pt. 579) 548.

It is not a good law to argue that once such issue was not raised by any of the parties or the trial Judge that the matter should be laid to rest. It must be emphasized that where an appellate court sees a blatant error of law, that it cannot close or shut its eyes to it so that the error will continue to be perpetuated. See U. B. N vs. Ozigi (1994) 3 (1994) 3 NWLR (Pt. 3330 385; Opera vs. Dowel Schlumberger (Nig.) Ltd (1995) 4 NWLR (Pt. 390)440; Nnadi vs. Okoro 91998) 1 NWLR (Pt. 535) 573.

I will also add that it is the duty of the appellate court to correct errors of the lower court and such errors include those emanating from judgment appealed against even if the points of issue were not mentioned or raised by the parties in the lower court and leave is not required to argue complaints about such errors. See Raphael Agu vs. Christian Ozurumba Ikewibe (1991) 4 SCNJ 65.

In the end result, the Preliminary Objection lacks merit and it is therefore overruled.

In respect of the main appeal, the learned Counsel for the Respondent has launched a very serious attack on the provisions of section 251(4) of the Constitution. The sum total

of his argument is that Section 6(6)(a)and (b) and 236 of the 1979 constitution as altered conferred on the High Court of a State unlimited jurisdiction and that there is absolutely nothing in the provision of section 251(4) to suggest that the legislature intended that our High Courts could no longer enforce their own judgment against the State or that to do so they need a special fiat from the Attorney-General of a State or the Federation and that it cannot be reasonable for the said provision of the Constitution to be interpreted that the exercise of the judicial powers vested in the State High Courts should now depend on the whims and caprices of the executive, especially in this case where the State itself is a party. Section 251(4) of the Constitution has been set out earlier in this judgment. Before the subsection of the Constitution can be said to infringe the provisions of Section 6 of the Constitution, it must be shown that it contains anything inconsistent with Section 6 and Section 236 of the Constitution that is, it neither removes that adjudicatory power of the Courts as regards the enforcement of judgment by garnishee order or that it denies an individual access to the Court.

In N.N.P.C v. Chief Gani Fawehinmi & Ors (1998) 7 NWLR (Pt. 559) 598 at p. 612, Ayoola JCA observed as follows:

> "An enactment should not be held to infringe the provisions of section 6, generally or section 6(6)(b) in particular, unless it does one of the following:

1. Provide for the sharing of judicial powers of state with any other body than the courts in which it is vested by the Constitution.
2. Purported to remove judicial power vested in the court or redefine it in a manner as to whittle it, or
3. Limit the extent of the power vested. In short, for an enactment to infringe the provisions of section 6(1) and 6(b) of the Constitution, it must amount either to a total or partial usurpation of judicial powers vested in the courts by the Constitution; or, it must have purported to divest the courts of the exercise of judicial powers.

At page 613, he held as follows:

1. "It does follow from what have been said, that before a court called upon to strike out a provision of a statute that seeks to regularize access to a court or that has such effect, proceeds to hold that such constitutes an infringement of the right of access to court guaranteed by section (391) of the Constitution, it is not sufficient for the court to hold that an obstacle has been erected to the commencement of an action, it must also go further, inquire and make findings whether or not such 'obstacle" has been erected to the commencement of the action."

I am of the view that this is the correct statement of the law. I have had a critical look at the provision of section 251(4) of the said Constitution and I am fully of the view it does not provide for sharing of judicial powers of the state with any other body other than the Courts, that it does not purport to remove judicial powers vested in the Court or redefine it in a manner to whittle it or that limits the extent of power, that is infringing the provisions of Section 6(1) and 6(b) of the Constitution either to a total or partial usurpation of the judicial powers in the Courts by the Constitution.

In fact, Section 251 (4) of the Constitution only prescribes the condition that has to be fulfilled before a person commences legal proceedings. In Anambra State Government & 7 Ors. vs. Marcel Nwankwo & Ors (1995) NWLR (pt. 418) 245 at 256. Ejiwunmi JCA observed:

> "The result of the excursion to authorities therefore is that an edict or law which prescribes conditions that have to be fulfilled before a person can commence legal proceedings or institute same against certain bodies or provisions are not regarded as a denial of the right of access to the court by anyone wishing to do so. See also: Atolagbe vs. Awuni (1997) 9 NWLR (pt. 522) 236.

In CA/C/50/2001 – Osinene vs. Commissioner for Agriculture Water Resources and Rural Development and Others unreported judgment of this Court, Calabar Division delivered

In Ley v. 2003, this Court was called upon to interpret the provisions of Section 84 of Sheriffs and Civil Process Act which provides as follows:

> *84(1) Where money liable to be attached by garnishee proceedings is in the custody or under control of a public officer in his official capacity or in custodial egis, the order nisi shall not be made under the provisions of the last proceeding section unless consent to such attachment is first obtained from the appropriate officer in the case of money in the custody or control of the public officer or of the court in the case of money to custodial egis as the case may be.*
>
> *2. In such a case the order of which must be served on such public officer or on the registrar of the court, 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, the Attorney-General of the Federation,*
>
> *(b) in relation to money which is the custody of a public officer who holds public office in the public service of the State, the Attorney-General of the State.*

In the leading judgment, Olagunju JCA observed as follows:

> *"In the final analysis, I find the argument of the learned counsel for the appellant about the validity of section 84 of the Sheriffs and civil Process Act to be myopic and self serving. It is tendentious as calculated to draw by sophistry a veil over failure by the appellant to fulfill the vital and decisive condition precedent to the execution of judgment by garnishee order... I am satisfied that section 84 of the Act is not only in harmony with the Constitution, but it is also an indispensable complement designed to lubricate the application of section 84 of the Act so as to clear the operational hazards besetting execution of judgment by garnishee order."*

It can easily be seen from these authorities that Section 251(4) of the 1979 Constitution is not inconsistent with Sections 6(6)(a) and (b) or 236 of the Constitution or has in any way made the judiciary subservient to the other arms of the government and therefore has eroded the doctrine of separation of powers, as the leaned counsel for the respondent had very strenuously argued.

It has like so many other laws, prescribed the conditions that have to be fulfilled before a person can commence legal proceedings or institute same against certain bodies or

parliament and can therefore not be regarded as a denial of the right of access to the Court by anyone who wishes to do so.

As regards the argument by the Respondent's Counsel that the exercise of judicial powers vested in the State High Court should not depend on the whims and caprices of agents of the executive as in this case where the state itself is a party, one short answer to this is that an order of mandamus can be issued against the Attorney-General to compel him to give the necessary consent if he is reluctant to do so rather than the cry over an anticipated or imaginary refusal to give consent if he is reluctant to do so.

The last submission made by the learned Counsel for the Appellant is that Section 251(4) of the Constitution applies to different apparatus of State as department of its extra-ministerial department like corporations owned by the State and not to the State as a whole.

Section 251(4) reads:

> Notwithstanding the provisions of this section, no person shall enforce a judgment against a ministry or extra-ministerial department without the fiat of the Attorney-General of the Federation or the Attorney-General of a state...

A perusal of the above shows that "state" is not mentioned in it, what was mentioned is "a ministry or extra-ministerial department". It is this that forms the basis of the learned

Counsel's submission that the section applies only to different apparatus of the state as departments of it and not the state as a whole. With due respect to the learned Counsel, I find it very difficult to agree with him in this line of reasoning. If the section applies to all the government departments and all the extra-ministerial departments like corporations owned by the government, what is left to be state? It is these ministries and extra-ministerial departments that make up the entire machinery of the government both at Federal and State level. The interpretation given to the section by the learned Counsel is not only meaningless but very absurd. The fallacy in this argument can be very easily exposed when one looks at the case of Osimene vs. Commissioner for Agriculture and Water Resources (Supra).

In that case, the Appellant sued:

1. The Commissioner for Agriculture and Water Resources and Rural Development,
2. Ministry of Agriculture, Water Resources and Rural Development, and
3. Government of Cross River State.

If the argument of the learned Counsel is followed up, it all means that as to 1st and 2nd Respondents above, that a fiat from the Attorney-General is needed to commence proceedings against them but it is not necessary as regards the 3rd Respondent, the Government of Cross River State.

this is very absurd and meaningless and that cannot be in the least the intention of the lawmaker.

I am of the view that, that section applies not only to the ministry and extra-ministerial departments, but also to the government itself both at federal and state levels and obtaining a fiat from the Attorney-General is a sine quo non-before commencement of an action against the federal and state governments or extra-ministerial departments.

In the instant case, the issue of obtaining the fiat from the Attorney-General was not raised by any of the parties and the learned trial Judge also did not address his mind to it. Obtaining such a fiat from the Attorney-General is a condition precedent which must be complied with before the Respondent commence their proceedings and the failure of the Respondents to obtain the necessary fiat from the Attorney-General robs the Court of the jurisdiction to entertain the action and renders the whole proceedings a nullity.

In the final result, I am of the firm view that the appeal is meritorious and ought to be allowed. I therefore allow the appeal.

I set aside the garnishee order made by the High Court of Akwa Ibom State sitting at Uyo on 26th day of June, 1996."

I make no order as to costs."

INTERESTINGLY my Lords, that provision i.e. Section 251(4) of the 1979 Constitution as modified by Decree 107 has been removed from the 1999 Constitution. Or was deliberately never inserted in it.

The corresponding provision (Section 287 of the 1999 Constitution) now reads:

(1) The decisions of the Supreme court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the supreme Court.

(2) The decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the court of Appeal.

(3) The decisions of the Federal High Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, a High Court and those other courts, respectively.

At the risk of repeating a fact ad nauseum, it is clear that subsection 4 has been deleted. My Lords, there is no doubt that it was deleted because the legislators of the 1999 democratic constitution perceived that the said subsection was a vestige of military rule and colonialism.

This means that we are now back to where we were before Decree 107 was passed.

Let us see what Esho JSC rightly pointed out in his lead decision in **Ransome-Kuti v. A-G. Fed. (1985) 2 NWLR (Pt.6)211 Pg.235 – 237 @paras E-C.** In that case, his Lordship elucidated the point that many colonial laws (Such as Petition of Rights Act and Sheriffs and Civil Processes Act) which implied that the King could do no wrong and that the permission of the King must first be sought and obtained before one could sue him or enforce judgment against him had been done away with by Section 6 of the 1979 Constitution.

His Lordship held as follows in Ransome Kuti's case:

> **"What is left is in regard to the vicarious liability of the Government, but the appellants have been met by that old and almost anachronistic legal phraseology that the King can do no wrong. The State (the King in England) has immunity at common law against being sued. This was based on the ancient principle of non-impleading the King in his own courts. Petitions of right which could be addressed to the King would not however lie for tort. This is the prerogative of Kings, and Bacon, using a picturesque expression, has adequately described it as- "a garland of prerogatives woven around the pleadings and proceedings of the King's suits."**
>
> **But the doctrine of immunity was in fact older than Bacon. Maitland regarded "some of the flowers of this garland"**

to be merely buds in the days of Henry III. That was before Bacon. However, by the 16th Century, Petitions of right have been distinctly identified from petitions of grace. Yet it had always been recognized that Petitions of right would never lie for a mere tort. If the King, did wrong, he just could not be sued. It was the agent who committed that wrong on behalf of the King that would be liable. Again, that is the prerogative of Kings.

There is no doubt that there is a background and history for this archaic doctrine in that country – England. Their bards have described the country as a "teaming womb of royal Kings." But what is strange is that this common law doctrine remained part of our received laws and continued to be part of the common law administered in this country even after this country had become independent of that 'royal throne of Kings."

By virtue of the Interpretation Act (Cap 89) Laws of the Federation of Nigeria and Lagos 1959, section 45(1) provides as follows:

Subject to the provisions of this section and except in so far as other provision is made by any Federal Law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January, 1990, shall be in force in Lagos and, in so far as they relate to

Law matter within the exclusive legislative competence of the Federal legislature, shall be in force elsewhere in the Federation.

The above legislation has preserved this ancient and royal doctrine of immunity of the State in our laws.

But that is not all. By Ordinance No. 19 of 1915, the Petitions of rights ordinance was passed. This Ordinance was subsequently amended, the last amendment being made in 1954 (see Laws of the Federation and Lagos 1958 Cap 149). This last amendment could have been an opportunity to repeal a law which preserved immunity of the State. But it is remarkable that, though in 1947, England, "the Earth of His Majesty," which introduced the doctrine into the common law and which has historic justification for such introduction had passed the Crown Proceedings Act, S.2 of which provides-

"Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which if in were a private person of full age and capacity it would be subject ...." (italics mine)

That brought to an end the immunity of the Crown. In the year 1974, 14 years after this country became a Republic thus shedding off the last vestige of colonialism, the Petitions of Rights Act Cap 149 was amended, but such that the position as it was in pre-1947 England be

Nigeria, in so far as tort is concerned! Leaving this country to be more royal than 'Royalty itself"

I have checked all our Constitutions prior to 1979 and regrettably I am not able to find any provision which one could apply, even remotely but rightly, in an annulment of this doctrine. The Court is to administer law as it is, and not as it ought to be.

This immunity attaching to the State in this Country is sad. For the learned trial judge who look at evidence described at the scene that day as "hell let loose" and this he had set out in this analysis of the evidence. He said-

"It is beyond dispute, of course, that many soldiers, a witness gave the figure of 1,000, surrounded the entire buildings, hawing stones and broken botties. Many of them got inside the building, set fire to it as well as the generator in the compound."

This is bad. It should not be right that once the actual perpetrators could not be determined, the State, whose soldiers these perpetrators are could not be made liable. But then as I said the immunity of the State persisted at the time of the incident.

As it is the 1963 Constitution that governs this case I have made special study of the provisions that I believe may be applied to exclude this immunity. S. 22 is the closest but then it deals only with determination of rights and talks

about fair hearing being within a reasonable time. The complaint here is not that the appellants did not have fair hearing. No provision has helped.

Happily, for the country, but this does not affect the instant case, section 6 of the 1979 Constitution which vests the judicial powers of the country in the court has to my mind removed this anachronism.

Sub-section (6) of the section provides-

"(6) The judicial powers vested in accordance with the provisions of this section –

.....

(b) shall extend to all matter between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any questions as to the civil and obligations of that person."

(italics mine)."

In the above case, this Court did not hesitate to deplore the anachronism of the legislation that would make the Courts subject to the executive.

My Lords, please note that as at today there is no decision of the Supreme Court which touches on the interpretation of Section 84 of the S&CPA viz-a-viz the relevant provisions of the 1999 Constitution. An earlier decision of the Court of Appeal on the 1999 Constitution viz a viz the need to obtain the AGs consent is the decision in **Onjewu vs. K.**

Muntaka-Coomassie JCA (as he then was) seemed to get the point made by Esho JSC when his Lordship held that:

> "Now having considered the submissions of the counsel I wish to state that the general common law position was that in order to protect the States, certain pieces of legislation were necessary. The trend that was in vogue then was that no country allowed execution of judgments against the State. It was the law then also the State could not be allowed to be sued in tort. The king can do no wrong. The principle of "rexnon potest peceare" was well known and freely digested and applied.
>
> Courts were then regarded as King's Courts. Naturally one cannot expect judgments obtained by the individual servants to be enforced against the King in his own court. Clearly, the crown enjoys immunity from legal actions and could not be impleaded in its own court for the tortuous acts of its servants. In 1958 the said principle, the State could do wrong was fully made part of the law of this country by virtue of section 45(1) of the Interpretation Act (cap 89) Laws of the Federation and Lagos, 1958.
>
> The explains away how the common Law principle prevailed. Issues of public nuisance, the pre-action notice and the payment of certificate fees before filing certain

actions became the order of the day. In the same spirit of the King can do no wrong developed the idea that in order to protect the State, individuals (Kings subjects/servants cannot enforce judgment against the King (crown) in his own court without the consent of the Attorney-General. This attitude continued up to 1979 when the 1979 Constitution came into effect. I refer to Ransome Kuti vs. Attorney-General of the Federation (2001) FWLR (Pt. 80) 1637, (1985) 2 NWLR (Pt. 6) 211.

All the cases before 1979 affirmed that any decisions of the High Court against the State cannot be enforce without the fiat or consent of the Attorney-General of the State. So also other related requirements and conditions, like payment of certain fees before one can file an action before the High Courts of the States. It was then held that such conditions of requirements are lawful and constitutional. See Obada vs. Military Governor of Kwara State (1994) 4 SCNJ page 121 at 128 – 129. In this case, Belgore, JSC held thus:-

> "The Edict is a sort of double barrel proclamation of the native law and custom of panyan on appointment of their Chief after necessary investigations have been made and the acceptance of Tradition Council of Oyis Recommendation approved the appointment of a new Chief. The Edict, to my mind, was properly

made by the Military Governor of Kwara state as by doing so he has not contravened any part of the Constitution. Chieftaincy matters are within the powers of state Government and unless the exercise of the powers is inconsistent with the Constitution as it is now it cannot be challenged. (Italics mine for emphasis).

The High Court Judge in the case now on appeal at page 113 stated in discussing the case of Jallo vs. Military Governor, Kano State supra,

"....The Court of Appeal did not declare the Sheriffs and Civil process Law especially as regards section 84 on the State Proceedings Edict – section 8(3) as being inconsistent with sections 6, 236 and 251 of the Constitution as well as section 2(1) and (2) of Decree No. 1 of 1980 and therefore void. It follows therefore that section 84 of the Sheriffs and Civil Process Law and the State Proceedings Edict of 1988 do not shut out or inhibit the constitutional rights of the judgment creditor/respondent in taking steps to enforce the judgment provided he complies with the condition precedent, that is, by first seeking and obtaining the consent of the Attorney General."

That was the understanding of the learned trial judge vis-a-vis the decision of the court of appeal in the case of Jallo vs. Military Governor of Kano State, supra.

As I stated the position of the Common Law earlier on that the consent of the Attorney-General must be obtained before a writ of attachment can be issued. Whether the judgment sum is in the hands and control of a public officer or if it in the custody of the Chief Registrar (i.e. in custodial egis). See the case of Yesuf Ojo vs. H.A Williams and Anor, 11 NRL 163 and Ibidumni Fafunke vs. Thompson John & Ors. 11 NLR 106.

I am not unaware that it was contended that the mechanism of applying and obtaining the consent of the Attorney-General is a policy designed to prevent embarrassment to government. It was also contended that it is a policy aimed at giving notice to the government to pay up its just debts which the principal government functionaries may not be aware. These are noble polices and nobody will take issue with them. However any policy which will leave the judgment creditor at the mercy of the Attorney-General in whose name actions against governments are brought would amount to a judgment creditor seeking permission from his adversary, to allow him reap the fruits of his judgment to enforce the judgment against him.

The position of the law has now changed. 1979 Constitution has brought a fundamental change in the body of the law of this country. The archaic principle of law that the King will do no wrong and that servants cannot enforce the judgments against the King in his own court appeared to be vacated by the said Constitution. The present position is that it is the duty of the Attorney-General of the Federation or the state to ensure that the Federal or State Governments pay their lawful debts. The Attorney-General can no longer fold his arms for the judgment creditors to write him soliciting for his consent before he can enforce the judgment given in his favour. Ogundare, JCA has this to say in the case of Jallo vs. Military Governor of Kano State & Anor (1991) 5 NWLR (pt. 194) page 754/764 supra.

"Under the dispensation which has also been enshrined in the 1989 Constitution, it ought to be the duty of the Attorney-General, Federal or State to consult quickly with the Ministry/Commissioner of Finance or Budget, to provide funds to satisfy judgment debts lawfully obtained against the State. No Attorney General worth his salt should fold his arms and do nothing when the State is a judgment debtor."

That being the case, I agree that the judgment obtained by appellant should not be imaginary or unreal. It should

not be delusive and illusory. It must be real and ought to have its consequences. See the case of the Military Governor of Lagos state vs. Chief Emeka Ojukwu & 1 Ors. (1986) 1 NWLR (Pt. 18) page 621/643 per Oputa, JSC."

BUT curiously, his Lordship concluded by holding as follows:

"After considering the submissions of counsel to all the parties and the relevant authorities, I hold that since the demand for the consent of the Attorney-General of the State is sort of procedural and administrative in nature and it has not made any violence of the Constitution; it can be tolerated and accepted. I hold that the requirement of the consent or authorization/ permission of the attorney-General of a State are necessary before judgment of a High Court can be properly enforced. The provisions of section 8(3) of the state proceeding Edict, 1988 of Kogi State and section 8(4) of the Sheriffs and Civil Process Law could not be said to be inconsistent with the relevant provisions of the 1999 Constitution of Federal Republic of Nigeria. That being the case this court will have no reason to disturb the position taken by the trial court that failure of the judgment creditor to comply with the condition precedent. Obtaining the consent of the Hon. Attorney- General, deprived that court of the jurisdiction to hear the application. The two legislations

supra are not contrary to any of the provisions of the 1999 Constitution and I so hold." (underlining mine)

Consequently, the appeal lacks merit and is hereby dismissed with N2,000.00 costs to the respondent."

My Lords, undoubtedly the brilliant ratio of Muntaka-Coomasie JCA (as he then was) is profoundly inconsistent with his Lordship's conclusion. It would appear that His Lordship's conclusion was borne out of the reliance on previous decisions as settled under Section 251(4) of the 1979 Constitution even though the cause of action in this case arose in year 2000 and the provisions of the 1999 CFRN (as altered) should have been applicable since it automatically made Section 84 of the S&CPA unconstitutional.

In my view, if Section 84 of the S&CPA had existed since 1945 and Decree 107 was promulgated in order to give it constitutional flavor by incorporating it as Section 251(4) of the 1979 Constitution in 1993 by the Military Junta, the law makers definitely did so because they recognized the point that Section 84 of the S&CPA (on its own) was not only inferior to the 1979 Constitution but also in conflict with it.

It is therefore my view that standing on its own as it is today, and not being made a provision of the 1999 Constitution, it cannot be validly argued that it is not in conflict with the constitution.

Following the mischief rule of interpretation, there would have been no point in deleting it from the 1999 Constitution if the constitutional law makers intended that the provision should still be part of our laws in this day and age.

My Lords, this brings me to the hallowed twin doctrines of the supremacy of the Constitution (already fleetingly referred to by me and the Law Lords in some of the cases cited above) and separation of powers. Section 1 of the Constitution of the Federal Republic of Nigeria (1999) (as altered) provides clearly thus:

1. **(1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.**

   (2) The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.

   (3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

See **SARAKI v. FRN (2016) LPELR-40013 (SC).**

Thus, the Constitution is the Supreme law of the land. It is the grundnorm i.e. it is the basic law from which all other laws of the society derive their validity.

In **AGI v. PDP & ORS (2016) LPELR-42578 (SC),** the Court reiterated the point that no other law, legislation, be it regulation, rules or guidelines of whatever nature can come into effect so as to undermine the effect of a constitutional provision.

regards the powers of the Court in a constitutional democracy, my Lords, Section 287 of the Constitution of the Federal Republic of Nigeria 1999 (as altered) makes amble provisions as follows:

287 (1) The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court.

(2) The decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Court of Appeal.

(3) The decisions of the Federal High Court, the National Industrial Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, the National Industrial Court, a High Court and those other courts, respectively.

Your Lordships will find that the definition of authority and government as provided by Section 318 of the Constitution of the Federal Republic of Nigeria 1999 (as altered) puts it beyond conjecture that the Attorney General of the Federation is one of the persons referred to in the

Section 287; Section 318 defines authority and government respectively thus: "authority" includes government".

While government was defined thus: "government" includes the Government of the Federation, or of any State, or of a local government council or any person who exercises power or authority on its behalf.

While "function" was defined as: "includes power and duty"

While Section 18 of the Interpretation Act defines "person" as: "includes anybody of persons corporate or unicorporate."

Notably there is no caveat on the bindingness, authoritativeness and finality of the judgments of all cadre of superior Courts of record as the Constitution refers to them in Section 6 unless by implication the right of appeal has been invoked where applicable.

My Lords, the presidential system of democracy in existence in Nigeria is defined by the separation of the executive branch headed by the President who unilaterally choses his team outside the legislature. The head of government is elected to work alongside but not as a part of the legislature like the parliamentary system. It is trite that separation of powers is a constitutional principle introduced to ensure that the three major institutions of the State, namely the legislative, executive and the judiciary are not concentrated in one single body whether in functions, personnel or powers. The division ensures that the powers of each branch of government are not in conflict with others. The intention behind a system of separated powers is to prevent the

concentration of powers by providing for checks and balances. This has been meticulously done in the 1999 Constitution (as altered). Nowhere in the 1999 Constitution (as altered) have the powers of the judiciary been made subject to the powers of the executive.

In **TANKO v. STATE (2009) LPELR-3136 (SC)**, this Court per Pius Aderemi, JSC (Pp. 18-19, paras. B-D) is instructive in this regard wherein the Court held that:

> **"It cannot be denied that the CONSTITUTION (the GRUNDNORM) of this country, indeed, the constitution of any country is supreme. It is by it (the Constitution) that the validity of any laws, rules or enactment for the governance of any part of the country will always be tested, it follows therefore, that all powers; be they legislative, executive and judicial, must ultimately be traced or predicated on the Constitution for the determination of their validity. All these three powers that I have mentioned must and indeed, cannot be exercised inconsistently with any provisions of the Constitution. Where any of them is so exercised, it is invalid to the extent of such inconsistency."**

My Lords, consider the decision of this Court in **OGAGA v. UMUKORO & ORS (2011) LPELR-8229(SC) (P. 33, paras. F- G)** wherein this Court Per Adekeye JSC held on the nature and effect of the supremacy of the Constitution thus:

"In the Supremacy and Hierarchy of laws the Constitution is superior to an Edict. It is the provision of 1979 or 1999 Constitution Section 1 (3) that: -

> "If any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency void."

Section 32 of the Chiefs Edict 1979 is nullified by this section of the Constitution for being unconstitutional. The justices of the Court of Appeal were therefore incorrect in their unanimous decision that Decree No. 12 of 1994 did not oust the jurisdiction of the trial High Court."

That in my opinion is what the applicability of Section 84 of the S&CPA has done. This Court in **NIGERIA AGIP OIL CO. LTD v. NKWEKE & ANOR (2016) LPELR-26060 (SC)** held that when the exercise of power by a person or authority is alleged to have been done outside the provisions of the Constitution or that such exercise is in direct conflict with the spirit of the Constitution, then that exercise of power is said to be unconstitutional. There is no doubt that Section 84 of the S&CPA seeks to limit the exercise of the execution of a valid Court judgment, in that case, such an inferior legislation, outside the Constitution is null and void to the extent of its obvious inconsistency with Section 287 of the Constitution. It is both incongruous and ludicrous that the monetary judgments of the Courts where it involves

the government must be subject to the AG or AGF as the case may be, who by the wordings of Section 84 of S&CPA seems at liberty to withhold or grant consent according to his whims and caprice thus subjecting the judgment of the Courts to the supervisory authority of the AGF. I have read and repeated here all the laudable reasons given in the past for entrenching this legislation. I cannot agree that the embarrassment to government where government money is claimed by a judgment creditor is sufficient reason for a single functionary of the Executive arm of government at the State (AG) or Federal (AGF) levels to supervise the judiciary which is the obvious implication of Section 84 of S&CPA. One must rue the day and shudder at the spectre of a monetary judgment of the Supreme Court of Nigeria being subject to the supervision of the AG or AGF pursuant to Section 84 of the S&CPA. It detracts from Section 287 which imposes a duty on all authorities and persons to enforce the decisions of the Courts and also creates a mandatory duty on the office of the AGF and other persons and institutions to automatically enforce the judgments of the Courts unless there is a stay and an appeal against that judgment. In the comity of nations, it is more embarrassing for the judiciary of Nigeria to be seen as a toothless bulldog whose judgments can be ignored at the will of the executive. It is equally very embarrassing that a foreign judgment creditor would be told that after going through the judicial process to get his rights, he has to go to back to the executive for permission to enforce it.

The further argument in favour of this provision I have noticed in previous judgments is that the government would be inundated with frivolous and merely gold-digging judgment debts. How can that be so when at every step of the litigation process in our jurisprudence there are provisions to stay execution of a judgment and to promptly appeal. This case under review is a perfect example. After filing the Affidavit to show cause, the Appellant's Counsel did not go back to Court on the return date when the affidavit was considered by the Court and the Respondent (then applicant) was able to persuade the Court to grant the Garnishee Order Absolute as an undefended application. The MDA's must defend their institutions by deploying all means possible to defend and shield it from spurious judgment debt, not hide behind the bogeyman of Section 84 of the S&CPA because the AG & AGF would be in a position to ignore the judgment.

My Lords, on another wicket, the provision in Section 84 is so broad, it appears to give the AGF a discretion as to whether or not to grant consent. This is not a circumstance similar to where the law requires a condition precedent before an action can be filed. For instance, most government establishment statutes require that the government department be given pre-action notice which gives the government or MDAs time to come to terms to resolve the dispute without resort to litigation. My Lords, we must distinguish between administrative pre-conditions set up by the executive to give the executive an opportunity

to resolve a dispute before it is submitted to the judiciary e.g. in chieftaincy, tax matters etc.

In such an event, the aggrieved party, after the required notice, has access to the Courts even if the MDAs ignores his pre-action notice. However, Section 84 is drafted in such a manner that suggests that without obtaining the AGF's consent, no judgment can be enforced. This also debunks the argument that it is a mere procedural conditional precedent within the absolute control of a judgment creditor to take like all other condition precedents to litigation embedded in other statutes. In the case of Section 84 of the S&CPA, the judgment creditor initiates the steps while the AG may or may not close the circle to ensure that the consent is granted. In all other statutes prescribing conditions precedent to initiate litigations, the condition precedent are within the exclusive control of the litigant. For example, reference to arbitration, reference to mediation, appeal to an administrative review board, issuance of pre-action notice etc; once the litigant complies, he can go to Court where pre-action notice is ignored, or reference to arbitration is ignored by the other party, as it is his exclusive purview to comply.

The difference between the two scenarios was amply stated in **NNPC v. FAWEHINMI (1998) 7NWLR Pt. 559 Pg. 598** cited copiously in **GOVT, AKWA IBOM v. POWERCOM (SUPRA)**. The main question in NNPC v. Fawehinmi (supra) an appeal from the decision of the Federal High Court was whether Section 12(2) of the NNPC Act was compatible with Section 6(6)(b) and Section 33(1) of the 1979

Constitution and Article 3(1) & (2) of the African Charter on Human and Peoples Rights. In essence, it had to do with the constitutionality of the pre-action notice required in Section 12(2) of the NNPC Act. The decision of Govt of Akwa Ibom v. Powercom (supra) did not state clearly the full opinion of the Court of Appeal on this issue. The full opinion of Ayoola JCA (as he then was) expressed in NNPC v. Fawehinmi (supra) not fully quoted in Govt of Akwa Ibom v. Powercom (supra) is as contained on pages 611 – 613 of the NWLR as follows:

> "It is expedient at the onset, to put Section 6(6)(b) of the Constitution in its proper perspective for the determination of this appeal. In most written constitutions, there is a delimitation of the power of the three independent organs of government, namely: the executive, the legislature and the judiciary. Section 6 of the Constitution which vests judicial powers of the Federation and the States in the courts and defines the nature and extent of such judicial powers does not directly deal with the right of access of the individual to the Court. The main objective of Section 6 is to leave no doubt as to the definition and delimitation of the boundaries of the separation of powers between the judiciary on the one hand and the other organs of government on the other, in order to obviate any claim of the other organs of government, or even attempt by them,

to share judicial powers with the courts. Section 6(6)(b) of the Constitution is primarily and basically designed to describe the nature and extent of judicial powers vested in the courts. It is not intended to be a catch-all, all-purpose provision to be pressed into service for determination questions ranging from *locus standi* to the most uncontroversial questions of jurisdiction. An enactment should not be held to infringe the provisions of Section 6, generally, or Section 6(6)(b), in particular, unless it does one or more of the following:

(i) provide for the sharing of judicial powers of the State with any other body than the courts in which it is vested by the Constitution;

(ii) purport to remove judicial power vested in the court or redefine it in a manner as to whittle it; or,

(iii) limit the extent of the power vested. In short, for an enactment to infringe the provisions of Sections 6(1) and (6)(b) of the Constitution it must amount either to a total or partial usurpation of judicial powers vested in the courts by the Constitution; or, it must have purported to divest the courts of the exercise of judicial powers.

Statutes which are legislative judgment fall in the first category, while statutes which preclude judicial review of

executive decisions and actions and legislative actions may fall within the latter category. Other than in consonance with the Constitution itself, legislative provisions which preclude the judiciary from exercising its judicial powers violate the separation of powers principle enshrined in section 6 of the Constitution. It is because such enactment bars the individual's access to a court that it may offend section 33(1) as well. In this wise, sections 6 and 33(1) may be seen as complementing one the other. It is pertinent to mention, in passing, that in so far as section 33(1) permits tribunals to determine civil rights and obligations, section 6(6)(b) should be read subject to section 33(1) of the Constitution. The provisions of the Constitution that guarantee access to the court are to be found in section 33 of the Constitution. The distinction between the vesting of judicial power and the guarantee of freedom of access to the court should be borne in mind to avoid confusing interpretation and application of section 6 of the Constitution. Not every infringement of section 33(1) of the Constitution should be held, *ipso facto,* to constitute an infringement of section 6 of the Constitution. Where an enactment regulates the right of access to a court in manner as to constitute an improper obstacle to access to court, such should more appropriately be regarded as an

infringement of section 33 than an infringement of section 6 of the Constitution. Furthermore, the procedure for challenging an infringement of section 33(1) is not the same as that for challenging a contravention of section 6 of the Constitution.

An infringement of section 6 or section 33(1) of the Constitution is not constituted merely because an enactment regulates access to the courts by prescribing steps to be fulfilled before the jurisdiction of the court can be invoked. Where an enactment interposes the discretion of another person or organ between the desire of the individual to approach the court for redress and the commencement of proceedings, the court will readily strike down such enactment as an infringement of section 6. Decisions such as *Bakare v. Attorney-General of the Federation & ors* (1990) 5 NWLR (Pt. 152) 516 concerning sections 3 & 4 of the Petition of Rights Act (Cap. 149) LFN 1990) and *Adediran & Anor v. Interland Transport Ltd (infra)* concerning relator actions for public nuisance illustrate the point and can readily be understood as cases of interposition of a decision of a person not a judicial officer between the right of an individual and its exercise. Where the statute does not interpose such discretion the courts will not readily strike down the enactment as

constituting an infringement either of section 6 or section 33(1) of the Constitution, merely because it regulates the exercise of the right of access to a court, without an inquiry into the legal, or practical, propriety of the regulation. Although section 33(1) of the Constitution seems couched in absolute terms, the right of access to court cannot be regarded as unqualified. By virtue of section 33(1) an individual has the right of access to a court in the sense that he must be able to have the matter in dispute brought before a court for determination without any improper legal or practical obstacles being placed in his way. The right so stated does not, however, *ipso facto* mean that regulation of access to a court is precluded. Such regulations abound in the rules of procedure and in procedural legislation. The only and not unimportant requirement is that any regulation of the right of access to a court must have a legitimate aim and the extent and nature of such regulation must be reasonably proportionate to that aim. It goes without saying that regulation of the right which in effect subverts of (sic) injures the substance of the right cannot be proper or legitimate." (Underline mine).

My Lord Onalaja JCA agreed with his Lordship while Pats Acholonu JCA (as he then was) disagreed and held that the Courts should not accord

special privileges to prospective defendants in order to remove them from the orbit of the Constitution. His Lordship held that any restraint impeding access to the Courts is unconstitutional. The point I've been laboring to make was made by Ayoola JCA (as he then was) above to the effect that where the impediment depends on the discretion of an individual outside the Courts, then that impediment to access to justice is ipso facto unconstitutional.

My Lords, this is one of the bane of commercial transactions between companies, individuals and government MDA's in Nigeria. I have never been particularly convinced that the so called "embarrassment" to the government warrants the judiciary's enforcement of a provision that substantially erodes its stature as the final arbiter of disputes at whatever level. In the past, I had been moved more by the argument that the provision of Section 84 is just one of these procedural or administrative condition precedent and it should be applied as such. However, on deeper introspection and going through the history of the legislation, it is easy to appreciate that it gives unfettered discretion to the AG or AGF to deny access to justice and it is a bogeyman waiting at the door of the Courts to kidnap the Court's judgment which may or may not be released after payment of ransom (that is the application for consent) leaving the kidnapped judgment creditor gnashing his teeth waiting for the AG or AGF to exercise his discretion. If Section 84 were worded in such a manner that the judgment creditor were merely to notify the AG and after a stipulated period, the AG must comply and

the AG did not comply, the judgment creditor can initiate garnishee proceedings, then, it would be a mere procedural condition precedent which would not contravene Section 287 and thus unconstitutional.

As I said earlier, the principles of separation of powers as enshrined in the Constitution must be sustained by this Court.

In **ODE v. A.G. BENUE (2011) LPELR-4774 (CA)** the Court held that the provisions of Section 84 S&CPA are to "*ensure sound public administration and were a matter of public policy aimed at protecting public funds*". As I stated earlier, that had been the refrain of most Court decisions on this issue.

That case supports the argument that the requirement of AG's consent (if not used as an arbitrary veto to render a judgment of Court nugatory) cannot be unconstitutional. Consent per se, not unreasonably withheld nor inordinately refused, cannot be objectionable where the AG provides a reasonable excuse e.g. need to make fiscal appropriation to settle the debt from public revenue as required by Section 81 of the Constitution and Sections 17-22 of the Fiscal Responsibility Act. For the AG to authorize payment from public revenue without appropriation under Section 81 of the Constitution will be to override and usurp the ***power of the purse,*** exclusively vested by the Constitution in the National Assembly. E.g. where AG cites lack of an extant appropriation to authorize payment, failure to include the liability in the next succeeding budget for appropriation will justify enforcement after the next budget has been passed into law. The argument is that the waiting

period for this (inclusion in the budget) to happen, suffices to save the government the embarrassment which direct enforcement might otherwise expose the government to.

This argument seems to put the administrative convenience of government over and above the provisions of the Constitution. Since the beginning of a formal Constitution in Nigeria, the provision of Section 287 has existed in various forms to protect the enforcement and integrity of judicial pronouncements. As stated earlier, all the fanciful scenarios painted in the above argument as deliberated, blurs the lines of separation of powers. The executive knows that it would have judgment debts within a fiscal year and should have made the appropriate budgetary allocations in that regard. If we are talking government accounting, as an excuse to disobey the Constitution, we might want to remember that in every budget of government, there is always provision for judgment debts. Also, there is special expenditure and contingency votes. Finally, the judgment debt, may only be honored in the appropriate account to the extent of the balance in the account for that fiscal year.

As I said earlier, the AG & the AGF must protect agencies of government from gold-digging claims. It does not lie in the hands of the judiciary to seek to defeat its own purpose in the tripartite government arrangement and balance of power by looking at whether or not the executive has put its house in order.

Section 84, the AG or AGF may just ignore the application for consent or the judgment itself after it has been brought to his attention. Can it be the law that such a judgment cannot be enforced until the AG or AGF deems it fit to withhold or give his consent. Section 287 of the Constitution envisages that once the dispute has been submitted to the Courts and the parties have had their day in Court and a judgment has been lawfully given, after that point, the judgment having the imprimatur of the judiciary, the consequences of the litigation can no longer be moderated by the executive through the AG or AGF. This is an apt case of where the Constitution commands, discretion terminates.

I am of the view that Section 84 of the S&CPA is in conflict with Sections 1, 3, 6 and 287 of the 1999 Constitution (as altered) and I hereby strike it down from our statute books. I am of the view that the trial Court had requisite jurisdiction to entertain the garnishee proceedings without prior consent of the AGF. These issues are resolved in favour of the 1st Respondent.

ISSUE 3

Learned Appellant's Counsel submitted that the Court below having held that the trial Court was in error in holding that the Appellant's affidavit to show cause was incompetent ought not to have invoked its powers under Section 15 of the Court of Appeal Act and Order 20 Rule 11 of the Court of Appeal Rules 2016 to determine the garnishee matter when the trial Court lacked jurisdiction to entertain the matter *ab inito.* Counsel submitted that Section 15 of the Court of Appeal Act confers

wide latitude of powers on the lower Court to deal with any case before it from the trial Court as if that case was originally initiated before it as Court of first instance. Those powers are however not without limits and they cannot be exercised *in vacuo*. Counsel cited **INAKOJU v. ADELEKE (2007) 1 SC (Pt. 1) 1; (2007) 4 NWLR (Pt. 1025 423, OBI v. INEC (2007) 7 SC 268 at 309 – 310**. Counsel urged this Court to resolve this issue in favour of the Appellant by holding that the trial Court lacked jurisdiction to entertain the garnishee proceedings when the lower Court cannot validly act under Section 15 of the Court of Appeal Act and Order 20 Rule 11 of the Court of Appeal Rules to entertain it.

1st Respondent's Counsel submitted in rebuttal argument that the Court of Appeal was on very firm legal grounds and within the boundaries of its juristic powers when it invoked its powers under Section 15 of the Court of Appeal Act and Order 20 Rule 11 of the Court of Appeal Rules, 2016 to consider and determine the affidavit to show cause on the merit as if the proceedings were instituted before it, because all the conditions necessary for the invocation of such powers by the intermediate Court were present. See **NJIDEKA EZEIGWE v. CHIEF BENSON CHUKS NWAWIJU & ORS (2010) LPELR-1201 (SC).**

OPINION

I am particularly enamored by the reasons given by the Court below for activating its wide powers under Section 15 of the Court of Appeal Act. At page 153 of the record, the Court below held rightly as follows:

"The learned trial Chief Judge was clearly in error by holding that the affidavit to show cause was filed by the appellant considering the facts and circumstances of this case being a case of enforcement of a judgment of a court of competent jurisdiction, this court will not send the case back to the trial court as this will orchestra (sic) another inordinate delay in the enforcement of the said judgment. Since the cause shown was filed and it was before the trial court, this court is well endowed with the power to review the said cause shown and appropriately give the decision in the interest of justice. This step is peculiarly necessary in this case to stem the rising tide of garnishee proceeding remaining endlessly in the court longer than the time it took the court to determine the substantive claim of litigants. We shall therefore act under our laws to deal with the substantive application of the Appellant. Section 15 of the Court of Appeal Act and Order 20 Rule 11 of the Court of Appeal Rules 2016 are applicable here".

I agree that it is not the duty of the garnishee to fight a proxy war on behalf of the judgment debtor. See **GTB v. INNONSON NIG. LTD (2017) LPELR-42368 (SC)** where Kekere-Ekun, JSC stated unequivocally thus:

> "The only duty of a garnishee in garnishee proceedings is to satisfy the Court why the funds in its possession belonging to the judgment debtor should not be

garnished to pay the judgment debt. It is not the duty of a garnishee to play the role of advocate for the judgment debtor nor to protect the debtor's money in its possession."

What is important here is the resolve by the Court of Appeal to deploy Section 15 of the Court of Appeal Act and Or 20 r 11 of the Court of Appeal Rules 2016 to ensure that where it will not cause miscarriage of justice to any party and in suitable circumstances the Court of Appeal acts quickly to decide the merit of the case between the party. That is what enthrones justice. This issue is resolved in favour of the 1st Respondent.

The underlining issue of jurisdiction of the Court below being dependent on the jurisdiction of the trial Court had been resolved earlier by holding that the trial Court had the requisite inherent jurisdiction.

ISSUE 4

Appellant's Counsel submitted that the garnishee order nisi granted by the trial Court is quite clear and does not admit of any controversy. More so, the order of attachment was directed at money due or accruing to the judgment debtors in the coffers of the Appellant who are the 2nd – 4th Respondents in the instant appeal. Counsel submitted that assuming *arguendo,* that the lower Court was competent to entertain the garnishee matter, it ought to have without ado discharged the Appellant on the basis of its uncontroverted affidavit evidence.

Counsel further submitted that the Court below was wrong in relying on Section 124 of the Evidence Act, 2011 to arrive at the decision that the Appellant had the accounts of the 2nd – 4th Respondents by classifying them as MDAs (Ministries, Departments and Agencies) whose accounts were domiciled with the Appellant pursuant to the Treasury Single Account (TSA) Policy of the Federal Government. Counsel cited **MAMMAN v. BWACHA (2015) LPELR-40624 (CA), UTUK v. THE OFFICIAL LIQUIDATOR (UTUKS CONSTRUCTION AND MARKETING CO. LTD) (2008) LPELR-4323 (CA).**

Counsel submitted that as can be gleaned from that part of the garnishee order absolute, the order of attachment was directed at money due or accruing to the Judgment debtors who are the 2nd – 4th Respondents in the instant appeal. Appellant's case as per its affidavit to show cause, which the lower court rejected, was that it maintained no accounts in the names of the 2nd – 4th Respondents which the order nisi in effect directed to be attached. The records show that the 1st Respondent never filed a counter affidavit to challenge or controvert or dispute Appellant's position. The law is elementary that unchallenged depositions of facts in an affidavit are deemed admitted by the opposing party and would require no further proof. Counsel cited **STATE v. COMMISSIONER FOR BOUNDARIES SETTLEMENT, OYO STATE (1996) 37 LRCN 603 at 613.**

Contrary to the position of the Court below, the 2nd – 4th Respondents are not MDAs to which the TSA policy applies. Whilst MDAs are

government institutions and agencies, the 2nd – 4th Respondents on the other hand are head and officers of an agency of government which is the Nigeria Police Force in this case. The legal personalities of MDAs and their officers are separate and mutually exclusive as one cannot substitute for the other.

In reply, learned Senior Counsel for the 1st Respondent submitted that the Respondent (then Applicant) at the trial Court, in its affidavit in support of the motion exparte seeking the grant of the Order Nisi stated that the garnishee was the banker to the judgment debtors who are all agencies of the Federal Government of Nigeria; the said affidavit also went further to state that the accounts of the judgment debtors were all being managed by the Garnishee bank being the Central Bank of Nigeria under the Treasury Single Account (TSA) policy of the Federal Government of Nigeria (which fact is of notorious public knowledge). These facts which are contained specifically in paragraphs 7, 8, 9, and 11 of the affidavits in support of the application exparte for the grant of an order nisi, (See Page 6 of the records) were never frontally denied or controverted by the Appellant as Garnishee Bank. Counsel cited **DANLADI v. BARR. NASIRU AUDU DANGIRI & ORS (2014) LPELR- 24020 (SC).**

The averments in the Respondent's affidavit were never controverted in any way or manner by the Appellant. What the Appellant, (then Garnishee at the trial Court) did was to offer a bland statement in an

attempt to evade compliance with the dictates of the Garnishee Order Nisi.

The 1st Respondent finally on this issue contended in three parts from the above; firstly that the nature of denial required in law in reaction to the specific allegations of the Respondent (then applicant) was not met; secondly the invocation of statutory presumption under Section 124 of the Evidence Act by the Appellate Court was never rebutted in any way by the Appellant, and thirdly the specific findings of the Court of Appeal that the nature of the fact as contained in the affidavit deposition of the Respondent was one to whom the principle of judicial notice was attributable was never appealed against by the Appellant.

OPINION

On this issue there are some basic points to be resolved before the main issue. I have stated earlier and reiterating this Court several times that while the 2nd and 3rd Respondents can be juristic persons, being recognized by the 1999 Constitution (as altered), the 4th Respondent is unknown to law in our jurisprudence. The Nigeria Police may be vicariously liable for the actions of the officers of the Nigeria Police. The Police would be sued through the Inspector General of Police or the Commissioner of Police pursuant to Section 214 – 216 of the 1999 CFRN (as altered) and the Police Act. There is a need to evaluate the depositions in the affidavit of both the judgment creditor and the garnishee. In this case, the judgment creditor merely asserted both in

the application and grounds for the Order Nisi and the affidavit in support of same the following:

"AN ORDER to issue a garnishee order nisi attaching the sum of ₦50,000,000.00 (Fifty Million Naira) only, being the judgment sum (debt) awarded in suit No. FHC/ABJ/CS/156/2018 by the Federal High Court sitting in Abuja Coram J.T.TSOHO on the 10th day of October 2018 (being the date the said judgment was delivered) due to the judgment creditor 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 (TSA) policy and under the Garnishee's banking network system respectively"

The garnishee in the affidavit to show cause also stated in paragraph 6 as follows:

"That I was informed by Mr. Hussain Kagarai Sani, a Relationship Manager in the Client Services office of the banking Services Department (the Department in charge of managing the accounts of customers of the Bank) on the 27th December, 2018 in the office at about 3:18pm, in the course of official briefing in respect of this matter, that the Central Bank of Nigeria does not maintain account(s) in the name of the Judgment Debtors."

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 the garnishee and the affidavit to show cause filed by the garnishee denying liability is that it has no such funds, it behooves or the liability shifts back to the judgment creditor to further show (not in general terms) the evidence that the garnishee in fact is in custody of the funds of the judgment debtor. In the absence of this further evidence, the Court is obliged to discharge the garnishee. I agree with the persuasive opinion of my Lord Abiru JCA (as he then was) in the three cases of **POLARIS BANK v. GUMAU & ORS [2019] LPELR-47066 (CA) 1 at 34-37, STERLING BANK PLC v. GUMAU & ORS [2019] LPELR-47067 (CA) 1 at 19-35** and **FIDELITY BANK PLC v. GUMAU & ANOR [2019] LPELR-47068 (CA),** His Lordship, stated when a garnishee order nisi should be made absolute. In his words:

"...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 fails to condescend on material particulars and does not conflict with the facts deposed by the judgment creditor, the trial Court can proceed to make an order of garnishee absolute, notwithstanding the affidavit to show cause – SKYE BANK PLC v. COLOMBARA & ANOR [2014] LPELR-22641 (CA), GOVERNOR OF IMO STATE v. OGOH [2015]

LPELR-25949 (CA), ACCESS BANK PLC v. ADEWUSI [2017] LPELR-43495 (CA), FIRST BANK OF NIGERIA PLC v. OKON [2017] LPELR-43530 (CA), HERITAGE BANK LTD v. INTERLAGOS OIL LTD [2018] LPELR-44801 (CA), FIRST BANK OF NIGERIA PLC v. YEGWA [2018] LPELR-45997 (CA)."

Where however there is no further affidavit from both sides except a statement of general belief by both parties, their affidavit evidence is cancelled out and the onus of proof that the garnishee is in possession of the funds of the judgment debtor remains that of the judgment creditor. Apart from the above, it is to be observed that the current practice of counsel filing garnishee proceedings against numerous banks in a hit or miss endeavor to get hold of the judgment debt from whosoever must be deprecated. Judgment Creditors must do their due diligence before they commence garnishee proceedings to ensure that they file proceedings against persons actually holding money belonging to the judgment debtor.

It appears that there is a misconception of the role of the CBN as it relates to the Treasury Single Account Guidelines issued by the Accountant General of the Federation. This guideline governs mandatory remittances of all public revenue into a common pool account maintained by the Federal Government of Nigeria with the Central Bank of Nigeria and subject the transfer of any portion thereof to designated sub-accounts of Ministries, Departments and Agencies

(NLAs) as may be appropriated to them by the National Assembly as shown in paragraph 4.1.2 at pages 10-11 of the TSA Guidelines.

After the hearing of this appeal, learned Appellant's Counsel Chief Emeka Ngige, SAN sent in a letter to which was attached the "Guidelines on the implementation of the Treasury Single Account (TSA)/e Collection Manual" published by the Accountant-General of the Federation. It states inter alia that the TSA is a bank account or a set of linked accounts through which the government transacts all its receipts and payments. Into the said account is remitted all revenues due to the Federation Account and the Consolidated Revenue Fund of the Federal Government.

Incidentally, the Nigeria Police does not generate funds as it is not a profit oriented public agency but one which renders a social service in the protection of the public and the administration of justice. The Appellant stated baldly that it did not hold accounts in the names of the 2nd – 4th Respondents who are the Inspector General of Police, the Commissioner of Police FCT and O/C Intelligence Response Team (Special Anti-robbery Squad (SARS), Nigerian Police Force. That assertion was never contradicted by the 1st Respondent. The National Judicial Council, Supreme Court of Nigeria and the Nigeria Police probably have TSA accounts with the CBN, but not the Chief Justice of Nigeria, or the Chief Registrar of the Supreme Court, the Inspector General of Police or the Executive Director NJC etc. There is a distinction there on which I will go no further. Suffice it to say that the balance of

probability on the affidavit evidence was that the 2nd – 4th Respondents did not maintain a TSA Account at the CBN from which the judgment debt could have been recovered. Thus, the Order Absolute would have been in vain as one impossible to execute. Judges do not make orders in vain. Thus, the order that the 2nd – 4th Respondents are MDAs and that the Appellant maintained accounts in their names in the Treasury Single Accounts Policy of the Federal Government of Nigeria was a decision founded on the wrong factual and legal premises devoid of the evidence to back it up and must be set aside. In the circumstances, in spite of the success of the 1st Respondent on the 1st, 2nd & 3rd issues raised for determination, the Garnishee Order Absolute perversely made without supporting evidence is hereby set aside. In effect, this appeal is allowed in part. Appealed Allowed in part. I abide by the order as to costs in the lead judgment.

HELEN MORONKEJI OGUNWUMIJU, CFR
JUSTICE, SUPREME COURT

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

APPEARANCES:

Chief Emeka Ngige, SAN, with him Owonikoko, SAN, Kofo Abdul-Salam (Director Legal Services CBN), Onyeka Obiajulu, Esq., J.J. Odeh Esq., Chiamaka Anwanobike Esq., and David Alao, Esq., **for the Appellant.**

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

Akin Adewale, Esq., with him Julie Ogunsuyi, **for the 2nd – 4th Respondents.**