IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI

ON MONDAY THE 20TH DAY OF FEBRUARY, 2017
BEFORE HIS LORDSHIP HON. JUSTICE AKINTAYO ALUKO
JUDGE

SUIT NO.FHC/AI/CS/7/2017

BETWEEN:

1. BARR. GILBERT MONDAY OKORIE
2. HON. EMMA NWANKWO
3. CHIEF ROGERS OKPANI
4. MRS. THERESA ANYIGOR

APPLICANTS/
JUDGMENT CREDITORS

A N D

1. EBONYI STATE GOVERNMENT
   (REPRESENTED BY ATTORNEY GENERAL OF EBONYI STATE)
2. GOVERNOR OF EBONYI STATE
   (sued in his official capacity)
3. EBONYI STATE HOUSE OF ASSEMBLY
4. CHIEF JOSSY C. EZE
5. MR. NWEZE OFFOR
6. MR. BONIFACE MGBEBU
7. HANS OFFIA ESQ.
8. RT. HON FIDELIS OGODO
9. DR. NNACHI OKORO

(Jointly sued for themselves and others purportedly appointed as chairman and members of Ebonyi State Independent Electoral Commission)

JUDGMENT DEBTORS

1. FIRST NBANK PLC
2. GUARANTY TRUST BANK PLC
3. ZENITH BANK PLC

GARNISHEES

RULING

This is a ruling on the originating application for garnishee proceedings initiated by the Applicants/Judgment Creditors against the garnishees and judgment debtors.

The application was brought pursuant to the provisions of Section 83(1) of the Sheriffs and Civil Process Act Cap S6, Laws of the Federation of Nigeria, 2004, Order 37, Rules (1) (2) of the Rules of this court and under the inherent jurisdiction of this Honourable Court. The said application dated 24th day of January 2017 was filed on the 1st day of February 2017.

In support of the application is an 18 paragraph affidavit deposed to by the 1st Applicant/Judgment Creditor. The Applicants attached two exhibits in support of the application namely exhibits GM1 and GM2 which are CTC of the judgment of the National Industrial Court sought to the enforced and a copy of letter of demand for the payment of the judgment sum.

The Applicants' Counsel moved this application by adopting his written address in support of same and consequently urged the court to grant same.

In the originating application, the Applicants/Judgment Creditors are praying the court for the following reliefs;

"1. An Order attaching the sum of **N37,990,562.20 (Thirty Seven Million, Nine Hundred and Ninety Thousand, Five Hundred and Sixty Two Thousand Naira, Twenty Kobo) only** being the judgment sum and cost awarded in suit No: **NICN/ABK/02/2015** due to the Judgment Creditors/Applicants and standing to the credit of the 1st Judgment Debtor in her account with the garnishees in the following Account Numbers:

(a) First Bank Plc - Account No: 2029057146.

(b) Guaranty Trust Bank Plc - Account No. 0125733006.

(c) Zenith Bank Plc

2. **AN ORDER** Directing the Garnishees to appear before this Honourable Court to show cause why they should not pay over to the Judgment Creditors the sum of **N37, 990,562.20 (Thirty Seven Million, Nine Hundred and Ninety Thousand, Five Hundred and Sixty Two Thousand Naira, Twenty Kobo) only** in satisfaction of the Judgment sum and cost awarded in suit No: **NICN/ABK/02/2015** due to the Judgment Creditors/Applicants.

3. **AN ORDER** that the necessary processes in this suit be served on the 1st judgment Debtor/Respondent and the 1st, 2nd and Garnishees accordingly.

4. **AND** for such order or further orders as this Honourable court may deem expedient to make in the Circumstances of this application".

By the application, what the Applicants are asking for at this stage is an order nisi to show cause and for temporary attachment of the debts of the Garnishees standing to the credit of the Judgment Debtors in the custody of the garnishees in satisfaction of judgment sum in favour of the Applicants/ Judgment Creditors.

At the course of hearing the application, this Court directed Applicant's Counsel to address it on whether this court is the appropriate court to initiate this application and whether the application is in compliance with the provision of section 84 of the sheriffs and Civil process Act which stipulate obtainment of the consent of Attorney General as a condition precedent before initiating this type of application in an effort to commence garnishee proceedings.

Applicants' Counsel submitted that the law is clear that the funds held by bank is not considered to be fund in the hand of a public officer requiring obtainment of the consent of Attorney General before commencing Garnishee proceedings.

Counsel cited and relied on the cases of Purification Techiques Nig. Ltd vs. AG of Lagos State (2004) 9 NWLR (Pt 879) at p. 665; Mrs Paulyn Midallah vs. IGP & Anor, Judgment of FCT High Court delivered on 1/8/2012 in suit No. FCT/HC/M/8354/12; Wema Bank Plc vs. Osilaru (2008) 10 NWLR (pt 1094) p. 150.

Counsel submitted that the provision of section 84 of the sheriffs and civil Process Act is not applicable when the money concerned is held in the custody of a bank. Counsel also drew attention of the court to the provisions of Order VIII Rules 2(a), 3(b) of the Judgment Enforcement Rules which he said he complied with in this application. Counsel similarly drew the attention of the court to the provisions of Sections 2 and 19 of the Sheriffs and Civil Process Act where High Court or Magistrate Court are said to be the appropriate court to bring this type of application.

Counsel submitted that this court being a High Court is the right Court to initiate the application and that there is no law that precludes this Court from entertaining this Garnishee proceedings in respect of the Judgment delivered by another Court. He finally submitted that this Court has jurisdiction to entertain this application and then urged this Court to grant same.

In the drive to do justice in this case, I have considered the provisions of the law and the judicial authorities cited by the Applicants' Counsel and even gone beyond that. To start with, the case of Paulyn Midallah vs. IGP & 2 Ors (supra) relied upon by Counsel is not relevant and does not have force here. This is because apart from the fact that the said decision has only persuasive effect on this court, there are several decisions of the appellate court which are relevant and on point regarding the issues in contention.

With respect to the case of Wema Bank Plc vs. Osilaru (supra) relied upon by the Applicants' Counsel, I dare say that the issue in the case has nothing to do with Garnishee proceedings, or interpretation of section 84 of the sheriffs and Civil Process Act. It is simply on the propriety of the decision of Wema Bank Plc using the sum paid on insured mortgaged property of the Respondent who is the customer of the bank, housed or banked in the Respondent's account domiciled with the appellant bank to offset the earlier loan and overdraft facility taken by the Respondent customer from the bank.

It is true that the decision in Wema Bank vs. Osilaru was also to the effect that the relationship between a banker and customer is contractual and that the customer neither has custody nor control over money standing in the customer's credit in his account with the bank, that notwithstanding the decision in Onjewu vs. Kogi State Ministry of Commerce and Industry (2003) 10 NWLR (pt 827) 40 at 79 paragraphs A – D is much wider in scope than the decision in Wema Bank Plc vs. Osilaru's case. The provision of section 120 of the Constitution was interpreted and applied in Onjewu's case whereas, it was not in Wema Bank Plc vs. Osilaru. Furthermore, the purpose and import which the provision of section 84 of the Sheriffs and Civil Process Act and section 120 of the Constitution intend to achieve was not decided in Wema Bank Plc vs. Osilaru's case.

By the provision of section 84(1) of the sheriffs and Civil Process Act, 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 custodia legis, the order nisi shall not be made under the provisions of the last preceding section unless the 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.

By the provision of section 84(2) of the Act, in such cases the order of notice must be served on such public officer or on the registrar of the court as the case may be. By the provision of section 84(3) of the Act, in the 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 in the custody of a public officer who holds a public office in the public service of a State, the Attorney General of the State.

From the plethora of judicial decisions and pronouncements, the requirement for consent of the Attorney General before issuance of garnishee order nisi under section 84 of the sheriffs and Civil process Act is mandatory and remain a sustained condition precedent to the exercise of jurisdiction of

court in garnishee proceedings where money or fund to be attached is in the custody or under the control of a public officer like in this case. Refer to CBN vs. Hydro Air Property Ltd (2014) LPELR – 22587 (CA); Onjewu vs. Kogi State Ministry of Commerce and Industry (2003) 10 NWLR (pt 827) 40 at p. 79, paragraphs A – D and Govt of Akwa Ibom State vs. PowerCom Nig Ltd (2004) 6 NWLR (868) 202.

The question to ask is that, have the Applicants in this case complied with the requirement of obtainment of consent of the Attorney General of the State before commencing this proceedings? I note that the Applicants attached a letter of demand for payment of the Judgment sum dated 29th December 2016 as exhibit GM2 to their affidavit in support of the application.

In my considered view, this letter of demand is not a satisfaction of the provision of section 84 of the Sheriffs and Civil process Act. What the section requires and which constitute the condition precedent before this court can exercise jurisdiction in this case is the obtainment of consent or authorization of the Attorney General of the State before commencing garnishee proceedings. Letter of demand cannot and does not qualify as such consent or authorization.

In the letter of demand, it is nowhere stated that the Applicants require the consent of the Attorney General to commence garnishee proceedings. As a matter of fact, there is nothing in exhibit GM2 suggestive of an impending garnishee proceedings or that the Applicants are planning to attach public funds

in the custody of the Judgment debtors kept in the banks on their instruction. The said provision is a necessary procedural safeguard needed to prevent or avoid an embarrassment to Government which has been held not to violate the provisions of section 287(3) of the Constitution see CBN vs. Hydro Air Property Ltd (supra).

The Applicants ought to have done more by coming out clearly and unequivocally that they require the consent of the Attorney General of the State in their bid to commence garnishee proceedings against the government of the State. The Court of Appeal in Onjewu vs. Kogi State Ministry of Commerce & Industry (supra) held that the failure of the judgment creditor to comply with the condition precedent of obtaining the consent of the Attorney General deprived that court of the jurisdiction to hear the application.

The provision of section 84 of the sheriffs and Civil process Act has been held to compliment the provision of section 120 of the 1999 constitution to the extent that the rationale for the provision of section 84(1) and the condition therein contained for previous consent of the Attorney General before a court could validly issue even an order Garnishee Nisi against funds in the hands of a public officer is to ensure that moneys that have been voted by the House of Assembly of a State for specific purpose in the Appropriation Bill presented to that House and approved in the Budget for the year of Appropriation does not

end up being the subject of execution for other unapproved purposes under the sheriffs and civil process law.

While endorsing the above position, the Court of Appeal in Onjewu vs. Kogi State Ministry of Commerce & Industry (supra) (2002) LPELR – 55007 (CA) at p. 57 paragraphs B – D , per Albert Gbadebo Oduyemi JCA in his concurring decision said thus:

> *"There are lawful procedure and other lawful means in my respectful view by which a judgment creditor of government can obtain payment of any judgment debt ordered in his favour than by disturbing the Appropriation account for the year which had been duly passed by the appropriate legislature under the provisions of section 120 of the same constitution which enacted Section 287(3). Such moneys though in a bank account can only assuredly be withdrawn on the authority of a public officer for the purpose for which the House of Assembly authorized the money".*

This Court is not unaware that the Applicants' Counsel cited and relied on the case of Purification Techniques Nig (Ltd) vs AG of Lagos State (supra) which hold a contrary view and position different from what was decided in Onjewu vs. Kogi State Ministry of Commerce and Industry. This court has similarly noted that the decisions in both Onjewu's case and Purification Technique's case are decisions of the Court of Appeal and that the decision in Purification Technique's case is later in time when compared with the decision in Onjewu vs. Kogi State Ministry of Commerce and Industry.

The above must not however make one loose sight of the endorsement, revitalization and bringing into prominence the decision of the Court of Appeal in Onjewu vs. Kogi State Ministry of Commerce and Industry in the much later and recent decisions of the same Court of Appeal. The decision in Purification Techniques Nig (Ltd) vs Attorney General of Lagos State was decided in 2004 while Onjewu's case was decided in 2002 by the same court of Appeal. However, the same Court of Appeal has clearly and unequivocally revalidated its decision in Onjewu's case in its much later decisions decided in 2014 and up to 2016. This point clearly to their preference for their decision in Onjewu's case even though earlier in time than their decision in Purification Techniques Nig. (Ltd) vs. AG Lagos State (supra). See the case of CBN vs. Hydro Air Property Ltd (2014) LPELR – 22587 (CA); CBN vs. Kakuri (2016) LPELR – 41468 (CA).

The Court of Appeal in its recent decision in CBN vs. Hydro Air Property Ltd copiously referred to its earlier decision in Onjewu vs. Kogi State Ministry of Commerce and Industry and emphasized on the bindingness of the decision on this Court. The Court of Appeal in the said case at pp. 29 – 31 paragraphs F – G, A – G, A – G per Chinwe Eugenia Iyizoba JCA while delivering the leading judgment held thus;

> *"The issue of constitutionality of requiring prior consent of the Attorney General before issuance of garnishee order nisi under*

section 84 of the Sheriffs and Civil Process Act is not new and has been raised and decided in some previous decisions of this court. These include; (1) Onjewu vs. Kogi State Ministry of Commerce and Industry (2003) 10 NWLR (pt 827) 40; (2) Govt of Akwa Ibom State vs. PowerCom Nig Ltd (2004) 6 NWLR (pt 868) 202.

These two cases were not considered by the trial Judge. In the two cases this court held that obtaining prior consent of the Attorney General under section 84 of the Sheriffs and Civil Process Act is mandatory. In the case of Onjewu vs. Kogi State Ministry of commerce and Industry (2003) 10 NWLR (pt 827) 40 at 79 A – D, Muntaka Coomasie, JCA (as he then was) after considering section 287(3) of the 1999 Constitution and all the points canvassed as to the unconstitutionality of the provisions of section 84 of the Sheriffs and Civil Process Act and tracing its origin to the Common Law principle that the king can do no wrong, said: "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 to 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 is necessary before Judgment of a High Court can be properly enforced ... That being the case this court will have no reason to disturb the position taken by the trial court that the failure of 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. In Govt of Akwa

Ibom State case, Opene JCA said at page 224 paragraphs G –H;

"obtaining such a fiat from the Attorney General is a condition precedent which must be complied with before the Respondent commenced his proceedings and the failure of the Respondent 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 these decisions, this court has accepted the provision of section 84 of the Sheriffs and Civil Process Act as necessary safeguards needed by government to avoid embarrassment and specifically held that it does not do violence to the provisions of section 287(3) of the 1999 Constitution. These decisions of the court of Appeal are binging on the trial High Court and Lower Court has no discretion about it. See Ogunsola vs. NICON (2010) 13 NWLR (Pt 1211) 225 at 236 G – H.

I am of the firm view that in the light of the above decisions, the learned trial Judge ought not to have held that the provisions of section 84 of the sheriffs and civil process Act is in conflict with section 287(3) of the 1999 Constitution and therefore null and void. He may express his reservations about the correctness of these decisions but he must follow them in consonance with the doctrine of stare decisions".

Even in the case of CBN vs. Njemanze (2015) 4 NWLR (pt 1449) 276 relied upon by the Applicants' Counsel, the Court of Appeal at page 287 paragraphs E – F referred to the decision in Onjewu vs. Kogi State Ministry of Commerce and Industry (supra) while reiterating the import of section 84 of the

Sheriffs and Civil process Act which is to avoid embarrassment of not knowing that funds earmarked for some purposes have been diverted in satisfaction of a Judgment debt which the government may not know anything about.

Flowing from the above, the position of the law as held in Onjewu vs. Kogi State Ministry of Commerce and Industry (supra) still remains the law and in effect the condition precedent to the exercise of court's jurisdiction in garnishee proceedings where money or fund to be attached is in the custody or under the control of a public officer or government is the obtainment of consent of the relevant attorney general. Such condition precedent is mandatory and non-compliance with such condition precedent will rob court of its jurisdiction to entertain the application and the application will be incompetent.

Another fundamental requirement on what determine jurisdiction of the court in garnishee proceedings relate to the provision of order VIII Rule 2 of the Judgment (Enforcement) Rules with respect to the appropriate court or venue in which garnishee proceedings can be brought. Order VIII rule 2(a) and (b) of the Judgment (Enforcement) Rules provides;

> *"Garnishee proceedings may be taken (a) in any court in which the Judgment debtor could under the High Court (Civil Procedure) Rules or under the appropriate section or rule governing civil procedure in Magistrates' Courts, as the case may be, sue the garnishee in respect of the debt, or (b) where the debt is not yet payable, or is for an amount exceeding the jurisdiction of such court, in any court in which the*

judgment debtor could have sued the garnishee as aforesaid if the debt had been immediately payable or had not exceeded the jurisdiction".

In construing the above provision of order VIII rule 2(a) and (b) of Judgment (Enforcement) Rules, the Court of Appeal per Emmanuel Akomaye Agim JCA delivering the leading judgment in CBN vs. Kakuri (supra) in a very recent 2016 decision at page 24 paragraphs D – F held as follows:

"So garnishee proceedings can be brought in only a court where the judgment debtor can sue the garnishee for the debt. I agree with the learned Counsel for the appellant that the court where the police service commission (2nd Judgment debtor) can sue the CBN (garnishee) for funds in the custody of the appellant, attached by garnishee order is the Federal High Court of Nigeria and not Federal Capital Territory High Court".

The supposed funds or money of the 1st Judgment debtor in this case with the garnishees which is the debt being owed by the garnishees to the 1st Judgment debtor is the issue under order VIII rule 2 of the Judgment (Enforcement) Rules. The pertinent question is that can the 1st Judgment debtor sue the garnishees over such debts in this court?

It must be mentioned that the said debt arise or come to being as a result of transaction between the garnishees and 1st Judgment debtor in their relationship as bank and customer. This call for aid the provision of section 251(1)(d) of the 1999 Constitution and its proviso.

It is true that the Constitution in its section 251(1) (d) gives exclusive jurisdiction to this court in causes and matters connected with or pertaining to

banking, banks, other financial institutions, including any action between one bank and another, any action by or against the CBN arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures.

It must however be reiterated that by proviso to paragraph (d) of section 251(1), the jurisdiction does not include and shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank. The above relationship of bank-customer is the case over the debt of the garnishees being owed to the 1st Judgment debtor, which is sought to be attached vide this application.

With the above and the presence of the 1st – 9th Respondents in this application as parties, this court is not the appropriate venue for this application to be entertained, heard and determined see CBN vs. Kakuri (supra).

Furthermore, a visit to and a glance at the provision of section 287 of the Constitution is also relevant over the issue of this application. While subsections (1) and (2) of section 287 of the Constitution enjoin this court to enforce the judgments of the Supreme Court and Court of Appeal, subsection (3) of the section does not list this court as one of such courts enjoined to enforce the judgment of the National Industrial court.

Before I conclude this ruling, I must commend the courage and industry of the Applicants' Counsel in this case. Whilst hearing was going on in this application.

Counsel had wondered aloud on why this court should be that meticulous in the consideration of this type of application. Counsel had expected a bench ruling!

I must say that it is not my making, I have to be meticulous, this is because I have to follow the dictate and statement of the law. I am bound by the provisions of the law and relevant decisions of the appellate court. I have no choice here!

In conclusion therefore, since this application is in breach of the provision of section 84 of the Sheriffs and Civil process Act for failure of the Applicants to obtain the requisite consent of the Attorney General of the State before initiating this application, since by the provision of order VIII rule 2 of Judgment Enforcement Rules (JER) this court does not possess jurisdiction to entertain this application; and since by the provision of section 287(3) of the Constitution, this court is not one of such other subordinate courts enjoined to enforce the Judgment of the National Industrial court, I hold that this application is incompetent and the court lacks the jurisdiction to grant the order nisi.

On the whole, I strike out this application for incompetence and lack of jurisdiction.

HON. JUSTICE AKINTAYO ALUKO
PRESIDING JUDGE
20 – 2 – 2017

ENDORSEMENT:
Originating Application argued by:
F.S.N. Ogazi Esq for the Applicants.