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By Felix Daniel Nzarga & Omengala Kingley

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Appraisal of Powers of the Superior Courts to Garnish Funds in the Custody of Public Officer Under the Nigerian Legal System

Felix Daniel Nzarga [α] & Omengala Kingley [σ]

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I. Introduction

Garnishee proceedings otherwise known as garnishment is a judicial process of execution or enforcement of monetary judgement where money belonging to judgement debtor in the hands of a third party called garnishee is attached in satisfaction of judgment sum or debt. It is a special proceeding which is sui generis entirely different from other mode of execution[1]. The word garnishee is derived from the Norman French. It donates one who is requested to furnish a creditor with the money to pay off a debt against a person in custody or possession of money belonging to the judgment debtor.[2]

In the locus classicus case of *Union Bank of Nigeria Plc Vs Boney Marcus Industries Ltd*[3] Akin T. JSC defined garnishee proceedings in the following words:

> "*Garnishee proceedings are a process of enforcing a money judgment by the seizure or attachment of the debt due or accruing to the judgment debtor which form part of his property available in execution. It is therefore a species of execution of debt for which the ordinary methods of execution are inapplicable. By this process the court has power to order a third party to pay direct to the judgment creditor the debt due or accruing from him to the judgment debtor, as much of it as may be sufficient to satisfy the amount of the judgment and the cost of the garnishee proceedings.*"

Furthermore, garnishee proceeding is otherwise another means by which judgment is enforced. Where a judgement creditor has garnished the debt standing to the credit of the judgement debtor in the hands of the garnishee, upon the service of the order nisi from the court, the garnishee becomes a custodian of the whole judgement debtor's funds attached.[4]

The Nigerian courts with civil jurisdiction to garnish funds in the custody of a public officer are contained in the constitution of Nigeria 1999 as amended which specified the hierarchy of courts as contained in section 6(5) of 1999 constitution, the section lists the courts which are also established under chapter vii of the constitution, these are known as the superior courts of records. The constitution also empowered the National Assembly and State House of Assembly to establish courts by law. The inferior courts deemed established by the legislative bodies are Magistrate courts, District courts, Shariah courts, Area courts and customary courts.[5]

These courts have the powers to attach the funds in the hands of a public officer where a judgement is entered in favour of the judgement creditor. The powers are constitutionally provided for by virtue of section 287 of the 1999 constitution as amended.

The phrase "all authorities and person" in section 287(3) of the constitution has to be construed to include the attorney general, it is the clear intention of the law that the attorney general must ensure that judgement of courts of the land given against the government and / or its departments are enforced either by way of garnishee proceedings or other means of execution, see the decision in the case of Jallo vs Military Governor Kano state.[6] wherein the court held thus:

"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 minister/commissioner of finance or budget, to provide funds to satisfy judgement debt lawfully obtained against the state. No Attorney General worth his seat should fold his arms and do nothing when the state is a judgment debtor."

The above reasoning of the court that the Attorney general is expected to swiftly ensure that judgements or orders of courts are complied with is

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merely auspicious as the conduct, for example, of a one time sitting Attorney general of the Federation at a time the Supreme Court of Nigeria, by an order, directed the Federal government to release some funds due to Local Governments in Lagos State is somewhat ruinous to the above reasoning of the Court. This situation is still very much visible today, as there are several valid orders of courts that the Government has scornfully ignored or blatantly refused to comply with.

Thus, it is our view that, placing an unqualified discretion on the office of the Attorney General in relation to enforcement of money Judgements or orders against funds in the custody or control of a public officer is offering a statutory license or justification for the use of that office to frustrate enforcement of judgements given in favour of political opponents of his appointor.

None the less, garnishee proceeding is recognized as one of the modes of enforcement of judgement where successful litigant is entitled to the fruit of his judgment. It is also a truism that overriding function of the judicial process of enforcement is to enable the judgment creditor to reap the fruits of his judgment with a view to obtaining for his satisfaction, compensation, restitution, compliance with what the court has granted by way of judicial remedy or relief claimed by the judgment creditor.

II. Methodology

The research approach adopted for this study is exploratory. The attempt is to reach useful conclusion by the review, analysis of case law, legislation and divergent views of other researchers with regards to the wide and restrictive powers of the court to satisfy the judgment creditor; where the judgment is against a public officer whose funds being attached, is in the hands of the garnishee.

III. Concept Public Officer

The phrase public officer has received different legal interpretations. The interpretation section of 1999 constitution as amended under the 5th schedule, part I provides that a public officer, means a person holding any of the offices specified in part II of this schedule, the part II of the 5th schedule of the constitution referred to, taking a careful reading, does not recognise public institutes or corporate bodies established by law to include public officers.

One can as well glean same from section 3 of the interpretation law of Adamawa state which defines public officers thus:

> *"A public officer or public department to extend to and include every officer or department invested with or performing duties of a public nature whether under the immediate control of the president or of the governor of a state or not"*

The definition going by this section has excluded corporate bodies and institutions. Rather the reference or emphasis is on "natural person". In view of that, the duty of the court is to interpret the words contained in a statute and not to go outside the words in search of an interpretation; this was the position in the case of *Uni Ibadan V Kwara State.*[7]

It is the view of others that public officers include institutions, corporate bodies and natural persons, this position was held in the case of *Aiyela Began Vs L.G. Service Ilorin, Kwara State*[8]

IV. Legal Framework Governing Powers of the Court to Garnish Funds in Custody of Public Officer

The legal frameworks applicable are restricted to the following:

a) *The Constitution* of the Federal Republic of Nigeria 1999 as amended, particularly sections 1(3) provides that 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.

Section 36(1) which provides:

> *"In the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality"*

Further to the above one could not overlook section 287 (1) (2) & (3) of the 1999 constitution which gave the superior courts powers to enforce their judgments. Also, section 6 (6) b of the constitution 1999 as amended is relevant. The section vested judicial powers on the courts in all matters between persons or between government or authority and to any person in Nigeria and to all actions and proceedings thereto, for the determination of any question as to the civil rights and obligations of that person.

The combined effect of the above constitutional provisions is to secure and affirm the supremacy of the constitution and the court in determination of civil obligations of persons and government.

b) *The Sheriffs and Civil Processes Act:*[9] The relevant sections of the act of the national assembly that deals with the attachment of funds by the judgment creditor against the public officers are particularly sections 19, 83-92 which touches directly on garnishee proceedings. Section 19 is the interpretation section which defines words and phrases, section 83 gives the court jurisdiction,

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upon application by a party through ex-parte order to attach the sum in the custody of the garnishee for copy of such to be served at least 14 days before the date of hearing. Section 84 provides for the consent of the Attorney General before the money in the custody of a public officer can be attached, the very section that formed the crux of the paper as to the restriction of the powers of the court to exterminate its judgment where funds involved is in the custody of the public officer.

c) *Judgment (Enforcement) Rules:*[10] This is an integral part of the Sheriffs and Civil Processes Act, it is made to accompany the execution of the contents of the Act, it is made up of 12 orders, while order 8(viii) specifically provides for garnishee proceedings. The rules, puts power on the magistrate court to garnish funds in satisfaction of a judgement sum in the hands of the garnishee, either a public officer or non-public officer regardless of the volume of the fund. It provides the guiding principle to initiate garnishee proceedings.

d) The high court civil procedure rules of various states, the federal high court civil procedure rules and the national industrial court rules have gone a long way to provide for the procedure for initiating garnishee proceedings. May we make a silent reference to Adamawa State Civil Procedure Rules, under Order 43 Rules 1-7[11] share similar features as provided under the Sheriffs and Civil Processes Act.

V. Restrictions on the Superior Courts of Record, to Garnish funds in the Custody of a Public Officer

This paper seeks to answer the following questions in analysing the various statutory provisions limiting the judicial powers of the courts to attach funds, where the said fund is in the custody of public officers.

1. What is the constitutionality of the powers of the superior court to garnish funds in the custody of a public officer?
2. Whether the valid judgement of the court can be subject to review by the Attorney General before garnishee proceeding is initiated?
3. Is the consent of the attorney general a condition precedent which ought to be complied with before the court attaches funds in the custody of public officer or where he is a party to the suit?
4. From a forensic examination and analysis of section 83 of the Sherrif and Civil process Act, who should actually have the responsibility or obligation to seek and obtain the consent of the appropriate authority?

a) *In the quest to answer the above questions, it is necessary to reproduce section 84 (1) (3)*[12]

84 (1) "where money liable to be garnisheed 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 proceeding section unless where consent to such attachment is first obtained from the appropriate officer 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"

Section 84 (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 in the custody of a public officer who holds a public office, the public service of the state the Attorney General.*[13]

The above section implies that:

a) There must be in existence a valid judgment of a court against the government for the payment of monetary sum.
b) The government failed to pay the whole, or outstanding, the judgment creditor can approach the court through garnishee proceeding to attach the fund belonging to such government.
c) The section envisages where the government kept its monies in the custody of any government department, public servant, civil officer for supervision, control.
d) If the money sought to be attached is in control or custody of such public officer before the garnishee proceedings can be validly commenced, the law is saying the consent of the Attorney General has to be first sought and obtained in writing depends whether it is a state or federal government.
e) Where the money sought to be attached is under the control of the Central Bank of Nigeria, it is deem to hold it as a public officer, this shall be observed in the cause of the discussion.

The rationale behind seeking for this consent is to avoid embarrassment of not knowing the fund earmarked for specific project of government is used in satisfying debt[14]. This very position was further given a lengthy consideration in the case of Onjekwu vs KSMCI[15] where court of Appeal is of the view that the consent is required to ensure monies rated by the House of Assembly of a state for a specific purpose in the Appropriation Bill presented to that house and approved in the budget for the year of appropriation does not end being the subject of execution for other unapproved purpose.

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The office of the Attorney General of the Federation and the state respectively are created by virtue of the Constitution.[16] The sections has limited the powers of the Attorney General to criminal proceedings and has set a condition upon which the powers are to be exercised particularly in section 174 (3), 211 (3) CFRN that, in exercising the power regards have to be made to public interest, the interest of justice and the need to prevent the abuse of legal process.[17] The sections creating the offices have nothing to do with the initiation of garnishee proceeding neither has it to subjected the judgment of the court to the Attorney General's review or consent, rather allow garnishee proceeding to operate without the Attorney General's abuse.

Turning the search light to the Sheriffs & Civil Processes Act especially section 84 reproduced earlier, the powers seems to bestow on the Attorney General's unlimited powers which could be said to override the constitutional powers of the courts to enforce its judgement, in a situation where a valid judgement of a court which has to do with enforcement of monetary sum in the hands of a public officer, the law made it mandatory for the judgment to be scrutinised by the Attorney General by way of asking for the permission first before going ahead to garnish such funds. This position has received series of judicial interpretation affirming this position. In the case of Onjewu Vs Kogi State Ministry of Commerce & Indu stry where the court held:

> "I hold that since the demand for the consent of the Attorney General of a 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 authority/permission of the Attorney General of a state is necessary before the judgement of a high court can be properly enforced. The provisions of section of the State Proceeding edict, 1988 of Kogi State and section 8 (4) of the Sheriffs & Civil Processes Law could not to be said to be inconsistent with the relevant provisions of the 1999 constitution of the 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 judgement 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."

Further to the above, the court held in government of akwa ibom state vs power com nig. ltd.[18] that:-

> "Obtaining such a fiat from the Attorney General is a condition precedent which must be complied with before the respondent commences his proceeding and the failure of the respondent to obtain the necessary fiat from the Attorney General, robs the court of jurisdiction to entertain the action, and renders the whole proceeding a nullity."

The above decisions gave an answer to the question as to who has the responsibility to seek and obtain the consent of the Attorney General. But the question to ask is that, is there any express provision requiring the judgement debtor/ applicant to do so? A careful examination of sections 83 and 84 of the Sherriff and Civil process Act does not say so. The only obligation placed on the judgement creditor is to make an application ex-parte accompanied by an affidavit stating the matters expressly indicated in the section, which does not include the fact of seeking and obtaining the consent of the Attorney General. The law is settled that the express mention of any matter or matters operates to exclude that or those not mentioned. Thus the failure to mention the requirement of the consent of the appropriate authority as a matter to be contained in the affidavit in support of the ex-parte application by the applicant, we humbly submit, operates to relieve him of such obligation. It is our humble view that the answer offered by the Courts in the above cases amounted to the courts reading into that section what the framers never expressly said, which the courts are bereft of jurisdiction to do. Because the jurisdiction of a court to interpret any written instrument is limited to, simply, giving effect to the ordinary meaning of the words of the drafters or framers.

Moreover the obligation to pay any judgement sum arises the very moment the judgement or order is pronounced. The Court of Appeal in the Case of Zenith International Bank Ltd V. Reuben Ulebe Alobu[19] drawing inspiration from the Supreme Court decision in Chief M.O Olatunji V Owena Bank[20] restated the position as follows:

> *...unless the court otherwise orders, a judgement of court to pay money takes effect from the day it is pronounced or delivered in court. However, the court at the time of making any judgement or order, or at any time afterwards, may direct the time within which the payment or other act is to be done. A person directed by decree or order of court to pay money or do any other act is bound to obey the decree or order without any other demand for payment or performance, and if no time is therein expressed, he is bound to do so immediately the decree or order is pronounced...*

It is our view in this paper that the consent of the Attorney general is not a condition precedent to the bringing of the ex-parte application; it is only a condition precedent for the court to make the order nisi. The implication of this is that the consent is only needed for the court to validly make the order. Therefore the presence or absence of the consent is of concern only

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to the court and not the competence of the application. There is, no doubt, a world of difference between the competence of an application and the discretionary powers of a court to refuse or grant such an application, thus the mere fact that an application is competent does not make it automatically grantable by a court.

We have already shown that there is nothing in the provisions under reference making it expressly the obligation or responsibility of the applicant to seek and obtain the consent. We shall not examine the possibility of the court bearing that responsibility and how it may be discharged.

The critical point at which the consent becomes an issue is when the court is to make the order nisi. The question to ask now is, can the court after the filing of the ex-parte application direct that the said ex-parte application be served on the Attorney general for his reaction before proceeding to make the order? We think it is possible and appropriate for the court to do so as there is nothing preventing a court of competent jurisdiction from directing the service of its processes, in appropriate cases, on a person to be affected by any possible order that may flow from such proceedings. This is particularly more so as there is no prescription in the provisions as to the form or nature that the consent of the Attorney general is to be expressed neither is any stipulation made as to the factors that may influence the Attorney General in deciding whether or not to grant the consent.

Another inordinate effect of the above provisions is the fact that there is no remedy open to the applicant or the court in a situation where the consent is either expressly refused or situations where there is a complete inaction on the part of the Attorney general to exercise the power one way or the other for motives actuated by political or other ignoble considerations. This is a serious affront on the age long and inviolable maxim of "ubi jus ibi remedium." Furthermore can the court for any other reason refuse the order if the consent is sought and obtained? Or can the court declare the exercise of the power wrongful in the face of reasons that the court considers unreasonable as ground for refusing the consent? It appears, from the provision under reference, that granting the order nisi becomes automatic once the consent is given and the reason or reasons given for the refusal to grant the consent cannot come under the judicial lenses of the court for examination or be the premise for any order or pronouncement of the court.

The net effect of our analysis above glaringly points to the fact that the provisions can lead to significant undermining of, and constitutes an invidious affront to, the predominant place of the inherent powers of the court to ensure that orders of court are not scornfully disobeyed or rendered impotent by the deliberate act or conduct of any person or authority in Nigeria. Oputa JSC, reiterated the significance of the inherent powers of the Court in the administration of justice in the case of NDUKWE ERISI & ORS V.UZOR IDIKA & ORS[21] as follows:

> *It is doubtful if justice can, be effectively administered in our courts if the courts do not possess inherent power to make consequential orders, orders that directly or indirectly, mediately or intermediately promote the process of litigation and ensure proper administration of justice. Jurisdiction, inherent though it may be, to make consequential orders is the most effective weapon in the judicial and juridical armoury of our courts. Afterall judgements in favour of one party or the other should be consequential in the sense that it should flow from the operation of the law on those facts. A consequential order should therefore be that which follows as a result of what had gone before.*[22]

The constitutionality of the powers of the Attorney General to give consent before the commencement of the garnishee proceedings which the court hold is in consonance with all the constituted authorities that spell the powers of the courts can be seen in the decision of *Central Bank of Nigeria Vs Hydro Air Property Limited*[23] the court of appeal in that case held as follows:-

> "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 Processes Act is in conflict with section 287 (3) of the 1999 constitution and therefore null and void."

Having looked at the above few case laws, could one conclude that, the consent of the Attorney General is a condition precedent before a successful outcome can arise in garnishee proceedings against funds in the hands of public officer? This assertion can be disproved, being that seeking the consent of the Attorney General will amount to subjection of the court's judgment to the approval of the Attorney General which will offend one of the twin pillars of justice "*nemojudex in causa sua*"[24] once a court established by the constitution has determined the legal right of a citizen, the Attorney General has no role to play in the enforcement of that judgment, hence the provisions of section 84 of the Sheriffs and Civil processes Act which makes consent of the Attorney General a condition precedent to the attachment of the judgment sum is contrary to section 36 (1) of the constitution and therefore has to be declared null and void, the superior courts of record have the powers of declaring any existing law void where such law is inconsistent with the constitution.[25]

The constitution is the supreme law of the country and it will be absurd for any other law to claim supremacy over it by way of administrative or procedural functions having a look at section 1 (3) which provides:-

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"If any other law is inconsistent with the provisions of this constitution, the constitution shall prevail and that other law shall to the extent of the inconsistency be void"[26]

Section 6 (6) b provides thus:

"The judicial powers vested in accordance with the foregoing provisions of this section-

c) Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to civil rights and obligations of that person;"

Section 36 (1)[27] provides;-

"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality"

Section 287 (3)[28] provide:-

"The decisions of the Federal High Court, 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, National Industrial court, a High Court and those other courts respectively"

The combined strength of the above constitutional provisions clearly affirmed the independent nature of the courts of records to enforce its judgment without resort to the consent of the Attorney General, as provided for by section 84 of the Sheriffs and Civil Processes Act. It is abnormal to subscribe or arrogate the powers of the courts after delivery of judgment to the review of the Attorney General as it whittles down the powers of the court and erodes the independence of the court and undermining the constitutional powers. Section 84 of the Sheriffs and Civil Processes Act is not only inconsistent with the provisions of the constitution but has to be held repugnant to equity, fairness and good conscience as Attorney General becomes a judge in his own case.

The situation giving power to the Attorney General is likened to series of cases where the individuals have to seek for the consent of the Attorney General or the Governor/President before instituting action under the Petition of Right Law in 1963 and the whole section was declared inconsistent with the provisions of the constitution as Null and Void[29] the court in the case held:

"the combined effects of the provision of section 3 and 4 of the Petition of Right Act is that before the action envisage there under by a writ of summons, the plaintiff should as a first step, file his statement of claim in the high court and then deliver two copies to thereof in the office of the Attorney General who after studying it will have to ether give his consent to the commencement of the action by endorsing one of the copies of the statement of claim or refuse his consent in which case the plaintiff would not be able to take out a writ of summons".

The Court Further In The Case Of *Bakare Vs A. G. Federation*[30] Where It Was Held:

"The provision of the Petitions of Right to the extent that they purport to prevent aggrieved party from taking directions in court are inconsistent with section 6 (6) b 1979 CFRN and consequently as from 1979 the Act became null and void by virtue of section 1 (3) of the 1979 CFRN."[31]

This position was further affirmed by the court in the case of *Imo State Vs Greeco*[32].

VI. Whether Money in the Hand of a Public Officer Kept in the Commercial Bank is also Subject to the Consent of the Attorney General

It is our humble opinion, that the money or fund is no longer in the custody of a public officer, either artificial or natural person as it has transcended the position and now under the watch and care of the commercial bank as such, it cannot be held that it is in the custody of the public officer. This humble opinion is contrary to the holding of the court in the case *Of United Bank For Africa Vs Access Bank Plc And 1 Or Suit No Ca/S/21/2017 2018 Lpelr 44058* where it was said, it is pertinent to observe that money in a bank account is in the custody of the account holder thereof, in other words, it need not be in the pockets of the public officer, it suffices if the public officer has physical or constructive possession of the money, the bank merely keeps cashless records of account of its customers but the control of such account, which in the instant case lies with a public officer, is what constitutes custody, the physical cash, if any, belongs to the bank unless it is paid out.

It should be noticed that by the provisions of section 84 of the Sheriffs and Civil Processes Act, the consent of the Attorney General is only required where the money is in the custody or possession of a public officer in his official capacity not where it is kept in the commercial bank. A commercial bank is not a public

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officer in any official capacity whatsoever; it is simply a business entity keeping the funds of its customers for transaction purposes not for official use of the public officer. The government or public officer being one of such customers, such funds can therefore be validly attached through the garnishee proceedings for the satisfaction of the judgment sum. To hold otherwise is out rightly biased and sentimental towards an ordinary person who is a customer of the bank and lacks any protection as his consent must first be sought before the attachment should be effected liken to the public officer position.

VII. What is the Resultant Effect Where the Government Paid part of the Money to the Judgment Creditor

This question has received judicial interpretation in the case of *Federal Government of Nigeria Vs Interstellar Communication Ltd*[33] wherein the court held that:

> *"The Attorney General of the Federation having paid part of the money to be attached, there is in fact no consent left, the consent by express and necessary implication has been given by the Attorney General, it will thus amount to a reversal or superfluity to seek for his consent where he has already given his consent, moreover even if the consent is needed to be obtained, he has waived it by the payment he has made and cannot be heard now to turn around to deny what he has consented to expressly and by conduct. It is my humble opinion therefore that this case is an exception to the provision of section 84 of the Sheriffs and Civil Processes Act and the consent of the Attorney General of the federation need not be obtained again, and I so hold."*

One cannot close his eyes from gleaming through the case of Central *Bank Of Nigeria Vs Interstellar Communications Ltd. & 3ors*[34]. The Supreme Court has settled the contention as to the position of the central bank contrary to series of case law that uphold the Central Bank as a public officer. This new position affirms that, by virtue of section 2 (e) of the CBN Act[35]. Central Bank of Nigeria acts as a banker and provides economic and financial advice to the Federal Government of Nigeria, further by section 36 of the Act[36] the bank receives and disburses federal Government monies and keeps account thereof.

In this above case, the relationship between the appellant and the 3rd and 4th Respondents was that of a banker and customer relationship, in other words the appellant was not a public officer in the context of the provisions of section 84 of the Sheriffs and Civil Processes Act. So the need to seek the consent of the Attorney General of the Federation did not arise.

This position further received judicial affirmation in the case of *Cbn Vs Snecou Group Of Companies & Ors* [37] the above authority seems not to represent the current position again on the point as the case of *Cbn Vs Kakuri (2016) Lpelr 41408 …… On 21/12/2016.*The Court of Appeal posited that the term public officer within the context of section 84 of the Sheriffs and Civil processes Act must be interpreted purposively to include the public officer or government department that carries out its public duties through its officers, a reference to its employee in the discharge of the official duty amount to a reference to it, hence consent of the Attorney General must be obtained prior to institution of a garnishee proceeding against it.

The host of authorities to the effect that the requirement to obtain the consent of the Attorney General prior to institution of garnishee proceedings where a public officer has possession of funds of a judgment debtor runs in conflict of with the tenets of constitutional democracy. The cases in support of this include;

a) *Purifications Technologies Ltd Vs A. G. Lagos State* [38]
b) *Cbn Vs Njemanze* [39]
c) *F. G. N. Vs Coms Ltd*[40]
d) *Cbn Vs Interstella Communications Ltd. & Ors*[41]

This position held in the plethora of case above has been deflated with host of authorities to the opposite. The cases include;

a) *Cbn Vs Higro Air Ppty Ltd* [42]
b) *Onjewu Vs Kogi State Ministry of Commerce & Industry*[43]
c) *Government Of Akwa Ibom State Vs Power Com. Nig. Ltd.*[44]
d) *Cbn Vs Kakuri* [45]

The apex court had the opportunity of finally settling this lingering constitutional saga in the case of *Cbn Vs Interstella Comm, Ltd*[46] when the case went on appeal to Supreme Court. Instead, the Supreme Court tactically failed to make pronouncement on the burning contention as to the constitutionality of the requirement of consent of attorney general before funds in the custody of public officer can be garnished while in the hands of garnishee, this was the holding of the apex court in the case-

> *"certain qualifying conditions must be met for a case to come under the purview of section 84 of the sheriff and civil process act, In other words, justice demands that the attorney general of the federation must be a neutral/nominal party in the transaction and proceedings giving rise to the application for the garnishee order nisi and not him being the debtor. In this case, the attorney general of the*

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federation held out himself to be an active participant in the negotiations, transactions and even part-payment of the debt owed to the 1st and 2nd respondents. In the circumstance, the attorney general of the federation cannot be a neutral/nominal part''.

VIII. Conclusion / Recommendations

1. Parties, whether they are individuals or government ideally are supposed to be equal before the law. If Government and its departments as judgement creditors can be successfully garnished without obstacles, it will enhance access to justice and rule of law. The present situation as we have shown make a mockery of the inherent powers of the court to make consequential orders that may be necessary to give full effect and force to its orders when enforcement of money judgement against a government or its agency is in issue.
2. There is a need to repeal section 84 of the sheriffs and civil process act for being inconsistent with the constitutional provision, especially in the face of the numerous absurdities we have shown in this paper to exist in the provision of the said section.
3. There is also a need to make a law mandating the attorney general to immediately comply with all monetary judgement against the public officer without recourse to his office.
4. The conflicting judgements of the court of appeal ought to be reconciled by the Apex court taking a position to put the issue of constitutionality of the consent of attorney general to rest.

Footnotes

1. http://www.mondag.com/Nigeria/+526032/cinl+law/understanding+garnishee+proceedings+IN+Nigeria
2. EkeminiUdim, Principles of Garnishee Proceedings in Nigeria pg. 1
3. (2005) 13 NWLR (pt. 943) 654 at 666 paragraphs E-G
4. Sokoto State Government v. Kamdax (Nig) Ltd. (2004) 9 NWLR (pt. 878) 345 at 380 paragraphs A-E
5. D.I. Efevwerhan Principles of Civil Procedure (Snaap Press Nigeria Ltd.) 2013 Pg. 22
6. (1991)5 NWLR (Pt. 154) 754 at 764
7. (2013) 14 WRN 106 at 154-155
8. (2009) 22 WRN Pg. 108 R7
9. CAP 56 LFN of Nigeria vol. 14 2004
10. Ibid.
11. 2013 ASHCPR Pg. 91-94
12. CAP 56 LFN 2004.
13. Ibid.
14. Federal Government of Nigeria Vs Interstella Communication Ltd. (2015) 5 NWLR (Pt. 1463)1 at 36-37 Paragraphs H-D.
15. Onjewu v. Kogi State ministry of Commerce and Industry (2003) 10 NWLR Pt. 872 Pg. 41
16. Section 174 and 211 of the Constitution of Federal Republic of Nigeria 1999 as Amended
17. Ibid.
18. (2004) 6 NWLR Pt. 868 Pg. 202.
19. (2017) 4 NWLR (pt 1554) p 135.
20. (2008) 8 NWLR (PT 1090) P 668
21. (1987) 4 NWLR (Pt 66) P.503.
22. Underlined for our emphasis.
23. CA/L/235A/2012 Judgments of the Nigerian Courts of Justice.
24. Otepo Vs Sunmonu (1987) 2 NWLR Pt. 58 at 587
25. IwomaBiriya Vs Omoni (1985) 5 NWLR Pt. 119 Pg. 60
26. Section 1 (3) of the 1999 Constitution
27. Ibid.
28. Ibid.
29. Ibid.
30. Bakere Vs AG. Federation (1990) 5 NWLR Pt. 152 R. 5 Pg. 522
31. Ibid.
32. (1985) 3 NWLR Pt. 11 Pg. 78 and 79
33. (2015) 4 NWLR Pt. 1463 Pg. 1
34. (2018) 7 NWLR Pt. 1618 Pg. 294
35. 2004 LFN
36. Ibid.
37. Unreported C/A Appeal NO. CA/A/283/2015 delivered on 16/2/2016
38. (2004) All FWLR Pt. 211 Pg. 1479
39. (2015) 4 NWLR Pt. 1449 Pg. 276
40. (2015) 9 NWLR Pt. 1463 Pg. 1
41. (2015) 8 NWLR Pt. 1462 Pg. 456
42. (2014) 16 NWLR Pt. 1434 Pg. 452
43. (2003) 10 NWLR Pt. 827 Pg. 40
44. (2004) 6 NWLR Pt. 868 Pg. 202
45. LPELR 41468 CA 2016 Delivered on 21/12/2016
46. (2018) 7 NWLR (PT. 1618) 345 C-D.

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