

An analysis of
the Supreme Court's
Decision in *Central Bank
of Nigeria v Inagua
Frankline Ochife & 3 Ors.*



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Introduction

Garnishee proceeding is the process for enforcing a judgment sum through the seizure or attachment by the judgment creditor, of the sums available to a judgment debtor at the hands of a third party.¹

For clarity, a judgment debtor is the party against whom a court has issued a monetary judgment, meaning they are legally required to pay a specified sum of money. The judgment creditor is the party entitled to receive the payment under the court's judgment, while the garnishee is the third party who owes money to, or holds funds belonging to, the judgment debtor and is directed by the court to pay such funds to the judgment creditor.²

In this case, the judgment debtors were public officers, and attachment was sought against the Central Bank of Nigeria (CBN) as the garnishee. The decision clarifies the scope and limits of garnishee actions under Nigerian law, as well as the procedural

¹ United Bank for Africa Plc v. Ubokulo (2009) LPELR8923(CA); (2010)

² See section 83 of the Sheriff and Civil Processes Act

requirements for enforcing monetary judgments against public officers and government entities.

Brief Facts

On October 10, 2018, the Federal High Court (the “trial court”) awarded ₦50,000,000 (Fifty Million Naira) in damages in favor of the 1st respondent, Inagua Frankline Ochife, against the 2nd to 4th respondents, namely: the Inspector General of Police (IGP); the Commissioner of Police, FCT; and the Officer in Charge, Intelligence Response Team, SARS.

The 2nd to 4th Respondents failed to satisfy the judgement sum, prompting the 1st respondent to initiate garnishee proceedings against the Appellant, the Central Bank of Nigeria. He claimed that the judgment debtors’ funds were held by the Appellant under the Treasury Single Account (TSA) policy of the Federal Government and requested that the ₦50 million be deducted from these accounts to satisfy the judgment.

On December 10, 2018, the trial Court granted a Garnishee Order Nisi directing the Appellant to show cause why it should not pay the judgment sum to the 1st Respondent. The Appellant filed an affidavit to show cause denying that it maintained any account in the names of 2nd to 4th Respondent. The Appellant also argued that the trial court lacked jurisdiction because the 1st respondent failed to obtain the Attorney-General’s consent before initiating garnishee proceedings against it, while counsel for the 1st respondent argued that there was no need to obtain the consent of the Attorney-General of the Federation before proceeding with the garnishee application, reasoning that the relationship between the Appellant and the judgment debtors, as government agencies, was merely that of banker and customer, and therefore the funds could be garnished.

The trial Court held that the Appellant’s affidavit to show cause was filed out of time and granted a Garnishee Order Absolute.

Aggrieved, the Appellant appealed to the Court of Appeal, which held that the trial court was wrong in holding that the appellant’s affidavit to show cause was filed out of time because there is no law specifying the time within which the appellant must show cause in garnishee proceedings. However, invoking section 15 of the Court of Appeal Act, the Court of Appeal considered the affidavit on its merits and held that it was not satisfactory.

Relying on section 124 of the Evidence Act, 2011, the Court of Appeal took judicial notice that the accounts of Ministries, Departments, and Agencies (MDAs) of the Federal Government are maintained with the Appellant under the TSA policy, and concluded that the 2nd to 4th respondents were MDAs with accounts with the Appellant. The Appellate court also held that

the absence of the Attorney-General's consent was not fatal because the garnishee (CBN) had no authority to dispute the judgment itself.

Consequently, the Court of Appeal upheld the garnishee order absolute and dismissed the Appellant's appeal. Dissatisfied with this outcome, the Appellant further appealed to the Supreme Court.

Holding of the Supreme Court

The Supreme Court allowed the appeal and set aside the decision of the Court of Appeal, holding that the lower court erred in affirming the garnishee order absolute made against the Appellant.

The apex court held that in garnishee proceedings, the burden lies on the judgment creditor to establish that the judgment debtor has funds in the custody of the garnishee which can be attached to satisfy the judgment debt. In the present case, the 1st respondent merely asserted that the funds of the 2nd to 4th Respondents were held by the Appellant under the Treasury Single Account (TSA) policy but failed to provide any specific evidence identifying the accounts allegedly maintained by the 2nd to 4th Respondent with the Appellant.

The Supreme Court further held that the Court of Appeal was wrong to rely on section 124 of the Evidence Act, 2011 when it took judicial notice that the accounts of the 2nd to 4th Respondents were maintained with the CBN under the TSA policy. The Court explained that judicial notice applies only to facts that are not reasonably subject to dispute and cannot be used to fill evidential gaps in a party's case. The existence of accounts belonging to the 2nd to 4th Respondents with the Appellant was a material fact in dispute, which required proof by credible evidence.

The Court also clarified that the Inspector General of Police, the Commissioner of Police, FCT, and the Officer in Charge of the Intelligence Response Team are not Ministries, Departments, or Agencies (MDAs) of the Federal Government, but individual public officers within the Nigeria Police Force. Consequently, the Court of Appeal was wrong to assume that they maintained accounts with the Appellant under the TSA policy.

In addition, the Supreme Court held that the Court of Appeal's reliance on the TSA policy to conclude that funds belonging to the 2nd to 4th Respondents must be in the custody of the CBN amounted to speculation and a misapplication of the law. The affidavit evidence before the court showed that the CBN denied maintaining accounts in the names of the judgment debtors, and this denial was not effectively contradicted by the 1st respondent.

On the issue of section 84 of the Sheriffs and Civil Process Act, which requires the consent of the Attorney-General of the Federation before garnishee proceedings can be commenced

against public funds in the custody of a public officer, the Supreme Court held that this requirement constitutes a condition precedent. However, the Court explained that failure to comply with a condition precedent relates to procedural jurisdiction rather than substantive jurisdiction³

In its reasoning, the Court held that where a party becomes aware of a procedural defect in a process upon being served, the party must promptly challenge the defect before taking any further step in the proceedings. If the party proceeds to participate in the proceedings without raising the objection, the party is deemed to have waived the right to complain about the defect and is taken to have condoned the irregularity, thereby losing the ability to challenge the defective process later.

In this instance the Supreme Court noted that the requirement for Attorney-General's consent under section 84 is procedural in nature, and that the Appellant's objections based on it were not raised timeously.

The Supreme Court therefore concluded that the decision of the Court of Appeal was perverse, as it was reached without proper evaluation of the evidence before the court. Accordingly, the Supreme Court allowed the appeal, set aside the judgment of the Court of Appeal, and discharged the garnishee order absolute made against the Appellant by the trial court.

Conclusion

The decision of the court reaffirmed key principles governing garnishee proceedings and the enforcement of monetary judgments in Nigeria. The Court emphasized that the burden lies on the judgment creditor to prove that the judgment debtor has funds in the custody of the garnishee before such funds can be attached to satisfy a judgment debt. It further clarified that while garnishee proceedings may be brought against public funds, the requirement for the consent of the Attorney-General relates to procedural jurisdiction and must be raised promptly. A party who participates in proceedings without promptly objecting to such a procedural defect is deemed to have waived the right to challenge it. Challenging such a procedural defect is deemed to have waived the right to object.

³ Atolagbe v. Awuni (1997) 9 NWLR (Pt. 522) 536, Owoseni v. Faloye (2005) 14 NWLR (Pt. 946) 719,



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6 Cairo Crescent, House 9B
Off Adetokunbo Ademola Cr,
Wuse 2, Abuja.



people@hamulegal.com



+234 906 000 5026