IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA

IN THE OWERRI JUDICIAL DIVISION

HOLDEN AT OWERRI

BEFORE HIS LORDSHIP HONOURABLE JUSTICE I.S GALADIMA

DATE: Friday 27th May 2022 SUIT NO:NICN/OW/19M/2021

IN RE SUIT NO: NICN/OW/16/2019

BETWEEN:

PRINCE EZE MADUMERE JUDGMENT CREDITOR/APPLICANT.

AND

ZENITH BANK PLC GARNISHEE BANK.

AND

1. THE GOVERNOR OF IMO STATE
2. ATTORNEY GENERAL OF IMO STATE JUDGMENT DEBTORS/RESPONDENTS
3. IMO STATE GOVERNMENT

Representation:

* K.C.O NJEMANZE (SAN); K.I. UDUMA AND B. A. ABAKU FOR THE JUDGMENT CREDITOR/RESPONDENT.
* L.M. ALOZIE (SAN); R.U. OKOLO FOR THE JUDGMENT DEBTORS/APPLICANTS.
* R.C. CHINAKA FOR THE GARNISHEE.

**RULING:**

1. This ruling was reserved sequel to the application by the judgment debtors/applicants dated 12/11/2021 and filed on 16/11/2021. This application was brought pursuant to order 17 rules 1, 2(3), 14(6) of the rules of this court, wherein the judgment debtors/applicants sought an order of this court setting aside the garnishee order nisi issued by this court on 15/10/2021, together with the entire garnishee proceedings for being incompetent, null and void and robbing this court of the jurisdiction to entertain same. The applicants predicated their application upon 4 grounds to wit:
   * 1. That this court lacks the jurisdiction to entertain the [garnishee] application.
     2. The garnishee proceeding in this case was brought in contravention of section 84 (1) of the Sheriff and Civil Process Act CAP S.6 Laws of the Federation of Nigeria 2004.
     3. That though the money sought to be garnisheed is in the custody of the garnishee bank, it is however under the control of the Accountant General of Imo State who is a public officer.
     4. That the consent of the Attorney General which as a result of the above became a mandatory requirement before the commencement of the garnishee proceedings in this case.
2. The applicants’ application is supported by a 9-paragraph affidavit deposed to by one Bruno Nwachukwu, a litigation officer in the office of the 2nd judgment debtors/applicants. Attached to the said affidavit is exhibit ‘A’ Enrolled Order Nisi. There is also filed by the judgment debtors/applicants, a written submission in which learned counsel for the judgment debtors/applicants canvassed legal arguments and submissions in support of their application. Submissions of counsel shall be referred to where necessary in this ruling.

1. In reaction to the judgment debtors’/applicants’ application, the judgment creditor/respondent filed a 5-paragraph counter affidavit in opposition. The counter affidavit is deposed to by one Beatrice A. Abaku, a legal practitioner in the office of the respondent’s counsel’s office. The said counter affidavit was filed along with written submissions of counsel to the judgment creditor/respondent.
2. May I also add that on 11/5/2022 the learned counsel for the judgment debtors/applicants as well as the counsel for the judgment creditor/respondent orally adumbrated on their respective written submissions while adopting them. Reference to the facts deposed to in these parties’ affidavits as well as their counsels’ submissions shall be made in the course of this ruling.
3. It must be stated that this court entered a judgment on merit in the main suit (suit No. NICN/OW/16/2019) between these parties on 1/7/2021 in favour of the judgment creditor/respondent and against the judgment debtors/applicants. In an effort to enforce the final judgment against these judgment debtors/applicants, the respondent herein filed a motion ex parte on 5/9/2021 for a garnishee order nisi which was granted on 15/10/2021.
4. Meanwhile, the judgment debtors/applicants stated in their paragraphs 5, 6 and 7 of the affidavit in support of their application under consideration that there is need for the judgment creditor/respondent to obtain the consent of the attorney general of Imo State before commencing the garnishee proceedings, and that this was not done. The failure, according to the judgment debtors/applicants, divests this court of the requisite jurisdiction to hear and determine the garnishee application in the first place. Hence, they seek that the garnishee order nisi already made by this court be set aside.
5. In his written submissions, the learned senior advocate for the judgment debtors/applicants relied on the case of EXXON MOBILE CORPS V. ARCHIANGA (2018) 14 NWLR (PT. 1639) 229 AT 247-248; SKEN CONSULT (NIG) LTD V. UKEY (1981) 1 SC 6 to submit that this court has the powers to set aside the order nisi under contemplation for the reason that the garnishee proceedings were commenced without compliance to requisite conditions for the commencement of same. Further reliance was placed by him on OBETA V. OKPE (1996) 9 NWLR (PT. 473) 401 AT 447 B-C.
6. Counsel painstakingly reproduced the provisions of section 84 of the Sheriff and Civil Process Act 2004 and ministered that the consent of the attorney general of the state is required where the money liable to be attached in the garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custodial egis.
7. In paragraphs 3.06 and 3.07 of the learned silk’s written submissions, he emphasized that the judgment creditor/respondent, having not complied with the said section 84 (1) of the SCPA, the order nisi already obtained should be set aside for being null and void. Relevant judicial authorities were abundantly supplied by him including C.B.N V. UMAR SAJO (2020) LWGAL PEDIA (CA0 14682; ONJEWA V. K.S.M.C.I (2003) 10 NWLR (PART. 827) 40 AT 48 – 49; ODOR & ANOR. V. GOVERNOR OF IMO STATE & ORS. (2020) LPELR – 51439; C.B.N V. HYDRO AIR PTY LTD. (2014) 16 NWLR (PART. 1434) 482 AT 489; C.B.N V. BAKO (2021) 11 NWLR (PART. 1786) 122; C.B.N V. INTERSTELLA COMMUNICATIONS LTD. (2018) 7 NWLR (PART 1618) 294, etc. He therefore urged the court to grant his application in the interest of justice.
8. Learned counsel for the judgment creditor/respondent, in paragraph D1 of his written submissions, stressed on the meaning of the term, ‘public officer’ as used in section 84 of the SCPA to submit that the term does not include artificial persons such as the garnishee in the instant case. Reliance was placed on the case of C.B.N V. NJEMANZE (2015) 4 NWLR (PART. 1449) 276 AT 286 PARA. G.
9. He further cited the cases of UTAVIE V. THE CAPITAL DEVELOPMENT AUTHORITY (2019) LPELR-49095 (CA); PURIFICATION TECHNIQUES LTD V. A.G LAGOS STATE (2004) 9 NWLR (PART. 879) 665; C.B.N V. INTERSTELLA COMMUNICATIONS LTD. (SUPRA) to submit in all that the garnishee in this suit is not a public officer and could not have necessarily warranted the consent of the attorney general of Imo State in accordance with section 84 of the SCPA before the funds in its possession, can be garnished. Learned counsel urged the court to dismiss the application.

**COURT’S DECISION:**

1. I must at this stage observe on a light note that fortunately the issue in this current application is not novel, as authorities of the apex and the appellate courts are ubiquitous from time immemorial, which already expounded on the nature and the application of section 84 of the Sheriff and Civil Process Act 2004.
2. For the avoidance of doubt and for clarity of emphasis, I shall reproduce the said section 84 of the SCPA as follows:

“84 (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 custodial egis, 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 custodial egis, as the case may be.”

1. I find, as a matter of fact, that the question of whether the garnishee in the instant suit (Zenith Bank Plc), is a public officer or not, is clearly not in dispute as these parties acknowledge harmoniously that the garnishee herein is a commercial bank, and the same bank is in custody of the judgment debtors’/applicants’ money.
2. What I decipher to be the seed of discord is contained in paragraph 5 of the judgment debtors’/applicants’ affidavit, which reads thus: “that I know as a fact that the account being sought to be garnisheed is under the control of the Accountant General of Imo State though domiciled in the garnishee bank”. It is also worthy of mention that the respondent maintains that the money sought to be attached is in the custody or control of the garnishee – see paragraph 4(i) of the counter affidavit of the judgment creditor/respondent.
3. The language of the statute under reference is “custody” or ”control” are disjunctively stated. It is noticeable that the applicants here carefully used the latter term when they stated in the said paragraph 5 of their affidavit that the money to be attached is under the “control” of the accountant general of Imo State. This calls for the meaning of the term “control of” as used in the said section 84 of SCPA.
4. According to the Oxford Learner’s dictionary, the term “control” in relation to power means: “the power to make decisions about how a country, an area, an organization, etc. is run”. Suffice to say that in the spirit of section 84, the money sought to be attached must be in the custody of a public officer or controlled by a public officer who has power to decide how the account is run.
5. It is apposite to lay bare the position that the accountant general of Imo State qualifies as a public officer in virtue of section 318 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). However, conspicuously in want in this application is any evidence by the judgment debtors/applicants establishing the claim that the money sought to be garnisheed is actually under the control of the accountant general of Imo State. This court cannot speculate that it is in the absence of any material evidence.
6. I have stated earlier in this ruling that it is not in dispute that the garnishee in this suit is a commercial bank, and it is not a public officer within the legal parameters of section 84 of the SCPA. Needless to say therefore, the garnishee is not a public officer and should ordinarily not necessitate the seeking of the consent of the Attorney General before garnishee proceedings can be commenced in respect of the judgment debtors’ money in its custody –PURIFICATION TECHNIQUES LTD V. A.G LAGOS STATE (SUPRA); C.B.N V. INTERSTELLA COMMUNICATIONS LTD. (SUPRA).
7. The apex court’s decision in C.B.N v. INTERSTELLA COMMUNICATIONS LTD (SUPRA) copiously relied on by both parties’ counsel in their submissions must be contextually applied, as the said decision was made in a purely peculiar circumstance. It must be noted that the issue decided in that case by the apex court as relates to section 84 of the SCPA, is whether the Central Bank of Nigeria is a public officer for the purpose of the application of section 84 of the SCPA. It should be noted that the said issue was decided by the Supreme Court being mindful of its earlier decision in other cases such as the case of IBRAHIM V. JUDICIAL SERVICE COMMISSION, KADUNA STATE (1998) LPELR-1408 (SC) where the CBN was held to be a public officer.
8. Nonetheless, without prejudice to its earlier decisions qualifying CBN as a public officer, the court held in the case of CBN V. INTERSTELLA COMMUNICATIONS LTD (SUPRA) that the consent of the Attorney General of the Federation (HAGF) was not required giving the circumstances of the garnishee proceedings, wherein he participated and had always been a party to the negotiations on how to pay the judgment debt, part of which had even already been paid, before the garnishee order nisi was sought by the judgment creditor in that suit. The supreme court thus held inter alia as follows:

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. KSCMCI (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 demands that the AGF must be a neutral/nominal party in the transactions and proceedings giving rise to the applications for an order nisi and him being the debtor. It is well and explicit in 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 part payments of the debt owed. Paragraph 13 of the affidavit in support of the AGF’s application of 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 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 he had been sued in that capacity. With the AGF being the debtor thereof, 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…” (Underlined for emphasis).

1. I again observe that the peculiarity of the facts and circumstances of the decision of the apex court in the case of CBN V. INTERSTELLA COMMUNICATIONS LTD (SUPRA), were well appreciated in the recent decision of the appellate court in C.B.N V. OSONOKI (2022) LPELR-57210 (CA), wherein the court abundantly quoted from the decision of the apex court in CBN V. INTERSTELLA COMMUNICATIONS LTD (SUPRA).
2. Besides, legal and judicial authorities abound to the effect that the proper parties to a garnishee proceedings are the judgment creditor and the garnishee who is indebted to the judgment debtor. I do not have to search long and hard to apply any of those authorities – UBA PLC V. EKANEM (2010) 6 NWLR (PART. 1190) 207 of 226; CBN V. INTERSTELLA COMMUNICATIONS LTS & ORS. (2007) LPELR-43940 (SC). I am also not oblivious of the fact that the Attorney General of Imo State was sued as the 2nd defendant in the main suit. He participated in and indeed is the current 2nd judgment debtor/applicant herein. Thus, there is no gainsaying that the A.G of Imo State is a judgment debtor in this suit. The learned counsel for the judgment creditor/respondent submitted in paragraph D1 of his written submission that the defendants (i.e. judgment debtors/applicants) delayed the matter in what he described as spurious promises to settle out of court. This indeed, took several months prior today with excuses on each adjourned day that the HAG as well as the Governor, were considering the matter for a possible out of court settlement or that the latter was indisposed and inaccessible for a meeting.
3. In view of the said counsel’s submissions, it is observed that sequel to the order nisi made by this court, these judgment debtors/applicants have exerted efforts towards alternative settlement. In fact, this move was passively encouraged by this court. There is in fact, evidence in the record of this court made specifically on 1/2/2022 where the learned counsel for the judgment debtors addressed the court that on 31/1/2022, following the letters served on the parties and their counsel, they met in the office of the SSG, and the Attorney General and other principal officers of the executive cabinet were present. However, it was further submitted by counsel for the judgment debtors/applicants on the said date that they were unable to conclude settlement and so they agreed to seek for more time from this court.
4. It must be noted that the appellate court had with dexterity in the case of CBN V. HYDRO AIR PTY (2014) 16 NWLR (PART 1434) 482 defined the term, “public officer” to connote public department and every officer or department invested with the performance of public duty.
5. Before I make a final stop, I wish to emphasize in conclusion that from the preceding paragraphs in this ruling, I am convinced that the money sought to be attached by the judgment creditor/respondent is not in the custody of a public officer; and the money has neither been shown to be under the control of a public officer. Assuming but by no means conceding that the money sought to be attached is under the control of a public officer, that alone cannot warrant the application of section 84 of the SCPA 2004 in the face of the facts and circumstances of this suit, where the attorney general is the judgment debtor and has been a party at the meetings and other efforts to settle the judgment debt by alternative means. It is trite as rightly submitted by the learned counsel for the judgment creditor/respondent that the essence of the provisions of section 84 SCPA is to avoid any embarrassments to the government and the office of the A.G – C.B.N V. INTERSTELLA COMMUNICATIONS LTD (SUPRA). It is indeed therefore absurd to require the A.G, who had all along been a party in this suit up to the stage of this post judgment proceeding, for his assent to execute the valid and subsisting judgment of this court against him.
6. In the instant proceeding, the judgment debtors/applicants should not be allowed to scuttle the garnishee proceedings by invoking section 84 of the SCPA, where it is clear that the A.G of Imo State had been a party to the suit and in the transactions preceding and during these garnishee proceedings.
7. The application of the judgment debtors/applicants is bound to fail on the strength of the foregoing, and same is discountenanced and hereby struck out for lacking any merit with a reasonable cost of N250,000.00 against them in favour of the judgment creditor/respondent.
8. Ruling is delivered accordingly.

Delivered in Owerri this 27th Day of May 2022.

Mr. Justice Ibrahim Suleiman Galadima,

Judge.

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