IN THE COURT OF APPEAL
IN THE JOS JUDICIAL DIVISION
HOLDEN AT JOS

APPEAL NO: CA/J258/2021

BETWEEN:
CENTRAL BANK OF NIGERIA ..... **APPELLANT**

AND

1. **SHAFIU ISIAKA IDRIS**
2. **THE ARMED FORCES OF THE FEDERATION** .....**RESPONDENTS**
3. **CHIEF OF DEFENCE STAFF**
4. **ATTORNEY GENERAL OF THE FEDERATION**

1ST RESPONDENT'S BREIF OF ARGUMENT

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1ST RESPONDENT'S BREIF OF ARGUMENT

INTRODUCTION:

1. The 1st Respondent commenced a fundamental Right Suit against the 2nd – 4th Respondents (hereinafter referred to as judgment debtors) wherein judgment was entered in favor of the 1st Respondent and against the 2nd – 4th Respondents jointly and severally.

2. The judgment debtors ignored the judgment and elected not to appeal against same. On the strength of the judgment, the 1st Respondent instituted garnishee proceedings against several banks including the instant Appellant who was the 14th Garnishee.

3. All the other Banks filed various affidavits showing cause why the garnishee order Nisi should not be made absolute against them. The Appellant also filed an affidavit whereat it stated that it does not maintain an account for the judgment debtors. See paragraph 8 at page 18 of the Record.

4. The 1st Respondent filed a Counter Affidavit and a written address in reaction to the Appellants affidavit to show cause. At the proceedings, the judgment debtors filed various objections to which the 1st Respondent reacted to by filing Counter – Affidavits and written address. The Judgment Debtor's objections and the 1st Respondent's counter affidavit were not compiled as part of the Record of Appeal transmitted to this Court. Even the Motion on Notice which gave rise to the Garnishee Order Absolute was not transmitted along with the Record of Appeal transmitted to this Court.

5. The lower court after taking arguments on the objections on one side and the Motion on notice for order absolute on the other side, delivered a consolidated ruling dismissing the objections of the judgment debtors and proceeded to grant the

Garnishee Order Absolute against the Appellant. It was found categorically by the lower Court that the Appellant had in its custody funds belonging to the judgment debtors. The Appellant, in a calculated bid to frustrate the 1st Respondent's effort to benefit from fruits of the tedious series of litigation, hurriedly filed an Appeal and abandoned same until contempt proceedings was initiated against it. After contempt proceedings began, the Appellant hurriedly filed a motion for stay at the lower court.

6. The 1st Respondent reluctantly conceded to the motion for stay, conditionally to the effect that the judgment sum should be paid into court. Still relentless in its effort to frustrate the 1st Respondent, the Appellant filed another motion at this court seeking unconditional stay of execution.

7. The Appellant has now filed a motion to amend this Notice of Appeal and regularize the record of appeal it transmitted out of time.

8. This is the 1st Respondent's Brief of Argument urging this court to dismiss the Appeal with cost. But before delving into the merit of the Appeal, we shall raise and argue a preliminary objection challenging competence of the appeal and the jurisdiction of this Honourable Court to entertain and determine the appeal.

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that the 1st Respondent shall be heard objecting to the jurisdiction of this Honourable Court to entertain and determine this Appeal on the following grounds:

GROUNDS FOR THE OBJECTION

i. The Notice of Appeal instituting this Appeal was not severed on the 1st Respondent.

ii. The Record of Appeal transmitted by the Appellant is incomplete and therefore incompetent thereby depriving this Honourable Court of the jurisdiction to entertain the Appeal.

iii. The Appellant's Grounds contained in its Notice of Appeal are incompetent and liable to be struck out the same having been caught up by the principle of waiver.

ARGUMENTS ON THE OBJECTION

GROUND ONE

9. The crux of the first ground of the objection is the failure of the Appellant to comply with the standard practice as prescribed by the Rules on the service of Originating processes in our jurisprudence.

10. The law has since been solidified on the nature of service required for an originating process such as a Notice of Appeal. This court and the Supreme Court has on

several occasions made the point clear that service of a Notice of Appeal is required to be personal on the party against whom the Appeal is lodged. See the case of **NCS BOARD & ORS V. OGUNSINA (2022) LPELR-56415 (CA)** where this Honourable Court very recently held as follows:

> **Being an originating process, Notice of Appeal must be severed personally on the Respondent (s) unless otherwise ordered by the court or exempted by law**; see HEDIOHA & ANOR V. OKOROCHA &ORS (2015) LPELR-4683785C) per Okoro, JSC at page 31 paras A. **It is the proper service of the Notice of Appeal that activates the jurisdiction of the court to entertain the appeal**.

11. Flowing from the clear position of the law as stated above, it becomes manifest that failure to serve the notice of Appeal personally on the Respondent strips the court of the jurisdiction to hear, entertain and determine the appeal.

12. In the instant Appeal, the Appellant has failed to comply with the requirement to personally serve the notice of Appeal instituting this appeal personally on the 1st Respondent. The Supreme Court in the case of **IHEDIOHA & ANOR V. OKOROCHA & ORS** (2015) LPELR-40837(SC) stated the consequence as follows:

> "Ordinarily, the form of service required is personal service unless otherwise directed by the court. **In other words, where personal service is required and service is effected without leave of court for substituted service, any such service will be void and will not be countenanced by the court." per olukayode ariwoola, jsc (pp 70 - 70 paras a - c)**

13. Flowing from the above, we urge this Honourable Court to find and hold that the failure of the Appellant to serve the Notice of Appeal on the 1st Respondent is a fundamental vice which has infected the competence of this Appeal thereby depriving this court of the jurisdiction to entertain and determine the Appeal. We submit that Appeal is due and ripe to be struck out without much ado.

GROUND TWO

14. This ground is simple and straight forward. It challenges the Appeal on the basis that vital and material parts of the record that ought to be transmitted to this Court were left out by the Appellant.

15. As already highlighted in the introductory part of this Brief, the Motion on Notice for Garnishee Order Absolute which gave rise to the Ruling Appealed against and the various objections filed by the judgment debtors which also forms the bulk of the Court's ruling appealed against were all omitted and not transmitted for scrutiny on Appeal.

16. We submit that this omission is fatal as it robs the transmitted Record of Appeal of its competence and by extension the competence of the Appeal itself. This position is supported by the case of **MARGIM v. MARGIMA & ORS** (2021) LPELR-55266(CA) where this Court held:

> **"...I am bold to take this position on the premise that an appeal predicated on an incomplete record is incompetent, and no decision can be based on it.** See Alhaji Danladi Muzau vs Main street Bank & Ors (2015) LPELR-25688 (CA); Emeka Nwana vs Federal Capital Development Authority (2007) 11 NWLR (pt 1044) 59; Access Bank Plc vs Mr. A.N.C. Onwuliri (2021) LPELR-53078 (SC).; Chief Okochi & Ors vs Chief Animhwoi & Ors (2003) 2-3 SC 65." **Per EBIOWEI TOBI, JCA (Pp 21 - 21 Paras B - D)**

17. Flowing from the above, we submit that this appeal having been incompetent for want of complete record of appeal is bound to be struck out without much ado and we urge Your Lordships to so hold.

GROUND THREE

18. My Lords, ground 1 of the Appellants Notice of Appeal principally challenges the jurisdiction of the lower court to entertain the Garnishee proceedings on the grounds that the 1st Respondent allegedly failed to satisfy a condition precedent, to wit; seek and obtain the consent of the Attorney General of the Federation. Grounds 2 and 3 challenges the jurisdiction of the lower court on the grounds that the 1st Respondent violated Order VIII Rule 2(a) of the Judgment Enforcement Rules (JER) which suggests where Garnishee proceedings **MAY** be taken.

19. We shall deal with Ground 1 of the Notice of Appeal separately while we deal with Grounds 2 and 3 of the Notice of Appeal on the other hand separately.

20. On ground 1 of the notice of appeal, we respectfully submit that the alleged non-compliance with the condition precedence is a procedural irregularity and not one of substantive jurisdiction. See the case of MOBIL PRODUCING (NIG) UNLTD V. LAGOS STATE ENVIRONMENTAL PROTECTION AGENCY (2002) 18 NWLR (PT 798) 1 AND THE CASE OF I & F Forms (Nig) Ltd V. NNPC (2009) 2 NWLR (PT. 1155) 387.

21. Having established that noncompliance with condition precedence is a procedural irregularity; we submit that any appeal on a ground of non compliance with condition precedent cannot be raised for the first time on appeal. See the unreported case of **SAN AKANI & ORS V. JOSEPH AZORO & ORS** delivered on the 25th January, 2018 in appeal NO:CA/J/110/2015 where this court confronted with similar issues held at page 17 of the judgment as follows:

> "Matters of procedural irregularity must be raised by a party at the earliest opportunity upon being served with the court processes and before taking any

further step in the matter or he will be deemed to have waived the right to complain ... ...**The contention of the Appellant under their issue for determination is not one that can be raised in this court for the first time without leave having been first sought and obtained. The Appellants did not obtain the leave of this court to raise the issue and therefore this court has no jurisdiction to deliberate on the issue.**

22. The above clear position of the court has put paid to the 1st Respondent's contention that the matter of procedural irregularity cannot be raised by a party for the first time without having raised same at the lower court.

23. What is more, this Court very recently declined to entertain the same objection raised for the first time on appeal when the same CBN raised it but withdrew same at the trial court. This Court held that the CBN (the same Appellant) waived its right to raise this objection. See the case of **CBN v. MESSRS HYBRID ENGINEERING CO. LTD (2021) LPELR-56468(CA)** where this Court held:

> "Assuming that the appellant is entitled to benefit from the provisions of Section 84(1) and (3) of the Sheriffs and Civil Act, its conduct, of realizing that they had such a right and raising it as an objection in the trial Court but subsequently withdrawing the objection, can be explained or translated to be a waiver of its alleged statutory right. See the case of Central Bank of Nigeria v. Interstella Communications Ltd. & 3 Ors. (2018) 7 NWLR (Pt. 1618) 294 at 326, per Ogunbiyi, JSC; where the Supreme Court explained the doctrine of waiver as follows: **"It is clear as provided by the doctrine of waiver that a person is who entitled to a benefit or who has the choice of two benefits and is fully aware of his right to such benefits, is entitled to voluntarily neglect to exercise his right".** In this case, the record of the proceedings of the trial Court on the 7th day of May, 2018 is partly as follows: "TODAY: MONDAY, 7TH MAY 2018 MOTION NO. M/4966/2018 Garnishee represented by Isibor Aigbe (Asst. Legal Officer) S. L. Jimoh (Mrs) (with her: A. A. Mustapha, Esq.) of counsel for the Judgment Creditor/ Applicant Gbenga Olubajo, Esq. (with him: F. U. Oraekeyi, Esq. and Clement Gbadamosi, Esq.) of counsel for the Garnishee. JIMOH: The matter is fixed for the Garnishee to show cause why the order nisi should not be made absolute. We are ready. OLUBAJO: My lord, we have a preliminary objection dated 4/5/18 as well as an affidavit showing cause dated 7/5/18. We apply to withdraw our preliminary objection and rely on our affidavit showing cause in urging the Court not to make the order nisi absolute. May it please my lord. JIMOH: I do not oppose the application to withdraw the preliminary objection. In respect of the affidavit to show cause, the Garnishee has not denied having the money in their custody. They are merely saying that the Central Bank of Nigeria (CBN) is a public officer which is not the case. We urge my lord to make the order absolute. Most obliged." (Underlining mine, for sake of emphasis) As can be seen from the record of proceedings of the trial Court, reproduced above, the appellant withdrew its

objection and relied on its affidavit showing cause why the garnishee order nisi should not be made absolute. **Therefore, the appellant did not make any issue on alleged non-compliance with the provisions of Section 84(1) and (3) of the Sheriffs and Civil Process Act in the trial Court but concentrated on its affidavit or reasons showing cause why the order nisi should not be made absolute. Under the circumstances, the appellant is estopped from raising the issue of non-compliance on appeal. I find comfort for this opinion in the decision of the Supreme Court in Central Bank of Nigeria v. Interstella Communications Ltd. & 3 Ors. (supra)** where the apex stated as follows: "The alleged issue of non-compliance with the SCPA was not raised at the trial Court. As rightly submitted by the 1st and 2nd respondents' counsel, it is too late in the day for the appellant to seek a respite where it waived and forfeited it. **The appellant is also estopped by operation of law from raising this objection on appeal after it failed to raise it at the trial Court and took fresh steps in arguing other points of law which were totally irrelevant to an objection under section 97 of the SCPA." Per MOORE ASEIMO ABRAHAM ADUMEIN, JCA (Pp 17 - 20 Paras D - C)**

24. Going further, this Court further **BATURE ISAH GAFAI, JCA** in his contribution held:

> "I will emphasize that the Appellant having consciously and without any prompting applied to withdraw his important Preliminary Objection at the trial, by which he was to seek for the discontinuance of the Respondent's garnishee proceedings on account of the Respondent's alleged failure to obtain the consent of the Attorney General before seeking to attach the monies belonging to the listed judgement debtors as required under Section 84(1) of the Sheriff and Civil Process Act, **it is too late in the day for the same Appellant to now complain in this appeal that the consent of the Attorney General was not obtained." Per BATURE ISAH GAFAI, JCA (Pp 25 - 26 Paras E - B)**

25. The scenario in the above case played out almost exactly in the instant case. The Appellant attempted the raise this objection at the lower court via its notice of preliminary objection filed on the 28th June 2021 at pages 33 – 44 of the record. On the date set for the hearing of the objection the Appellant abandoned same. upon the said abandonment it was struck out by the lower court. See page 59 of the record where the court ruled:

> **This ruling had earlier been ready before it was arrested by a preliminary objection which has been struck out today.**

26. We respectfully submit that having abandoned the said Preliminary objection, the Appellant has waived its right to raise the issues canvassed therein just has held by this Court in the case of **CBN v. MESSRS HYBRID ENGINEERING CO. LTD (supra).**

27. In the light of the above, the Appellant at the lower court never challenge the jurisdiction of the lower court on the bases of failure to meet the condition precedence of seeking the consent of the AGF, the first time the Appellant is doing so is now on Appeal. This has been held to deprive the Court of the jurisdiction to entertain such a ground the same having been defective and incompetent.

28. Apart from the unreported case of **AKANI V. AZORO** (supra) and **CBN v. MESSRS HYBRID ENGINEERING CO. LTD** this court in this very division dealt with a similar situation in the case of CBN V. AZORO (2018) LPELR-44389 (CA) where the Appellant in that case challenge the jurisdiction of the lower court to grant a Garnishee Order Absolute without the judgment creditors first seeking the consent of the Attorney General. My Lord **HABEEB ADEWALE OLUMUYIWA ABIRU, JCA** held as follows:

> "Any attempt by either party to an appeal to raise and canvass arguements on points or issues that were not raised and /or canvassed before the lower court will be deemed out of line and struck down by the Appellant Court."

At page 11 of the judgment, this court further held:

> "The Supreme Court has held many times that an issue of non-compliance with procedural condition precedence for an action is a matter of procedural irregularity and not one of substantive jurisdiction, and which to be justiciable must be raised by the party relying in it in his case before the trial court."

29. In the light of the above, the Appellant having not raised the issue canvassed in its issue 1, Ground 1 of the Notice of Appeal at the Lower Court cannot be heard canvassing same for the first time in its court. We therefore urge your Lordships to decline jurisdiction over the Appellant's ground 1 and issue 1 and proceed to strike out same.

30. On the Grounds 2 and 3 of the notice of appeal, we submit that compliance with procedural rules of court is a mere irregularity which if not raised timeously is deemed to have been waived. What is central in the Appellant's complaint Grounds 2 and 3 of Notice of Appeal is provisions of Order VIII Rule 2(a) of the Judgment Enforcement Rules (JER) which suggests where Garnishee proceedings **MAY** be taken. For the sake of ease of reference, we shall reproduce the provision of the Rules hereunder:

> 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;

31. A careful reading of the above Rules of procedure reveals that the provision is tied to High Court (Civil Procedure) Rules of Court and not the Constitution. The provisions also employed the use of the word **MAY** which is optional as against SHALL which would have been mandatory in nature.

32. Having made the point that these grounds purely center on alleged non compliance with Order VIII Rule 2(a) of the Judgment Enforcement Rules (JER), the objections anchored on procedural rules ought to have been raised at the lower court first and not before this Court for the first time.

33. To firmly establish the point that the complaints in these grounds of the notice of appeal is a procedural matter, we submit that any alleged violation of rules of court (such as Order VIII Rule 2(a) of the Judgment Enforcement Rules (JER)) which are only made for the smooth administration of justice is a matter of procedural irregularity which if not raised at the earliest stage is deemed to have been waived.

34. This Court has also clearly held that that Order VIII Rule 2(a) of the Judgment Enforcement Rules (JER) is a procedural matter in the case of **CBN v. ACCESS BANK & ORS** (2022) LPELR-57017(CA) where it held:

> *It also is clear from reading the provisions of* ***Order VIII Rules 2, 3 and 9 of the Judgment (Enforcement) Rules and Section 7(1)(a)(b) and 8 of the Federal High Court Act, that they are procedural in nature and not capable of conferring the Court with jurisdiction. It only laid down the procedure to be followed to enforce the judgment of Court by way of garnishee proceedings.***

35. This Court also had held in a matrimonial cause where the Matrimonial Causes Rules also a Subsidiary Legislation that failure to raise an objection to the competence of a petition at the trial court amounts to waiver of the Rules. This was in the case of **ADEBOWALE v. OLUWADAMILOLA** (2017) LPELR-42696(CA) where this Court held:

> "The grouse of the Appellant herein as contended by Counsel is that the verifying affidavit accompanying the Petitioner's petition before the learned trial Court does not comply with the provision of Order V Rule 10 (1) of the Matrimonial Causes Rules, 1983 which in his view made it mandatory for a verifying affidavit to be written on the petition itself and not headed separately. ..... Learned Counsel for the Respondent countered the Appellant's Counsel's arguments by relying on the provision of Order VII Rule 3 (1) to (8) to the extent that the Appellant herein who was Respondent at the trial, in response to the Petitioner's petition, filed an Answer and Cross-petition without raising objection as required by law. ..... **These rules of procedure are established to regulate the Court's exercise of its jurisdiction; they do not by themselves confer jurisdiction in the Courts.** ..... It is therefore pertinent to note that in a matter such as the instant case, objections in respect of a petition filed before the Court be timeously raised in compliance with the provision of the law.

Raising such an objection after further steps have been taken in the proceedings before the Court offends the rule of procedure of Court and law and which is tantamount to waiving the objection. It was further held in Nasir V. Civil Service supra thus: **"Where a party fails to raise an objection during trial, he is deemed to have waived his right to do so on appeal on the pertinent point or procedure." The learned Counsel for the Appellant in his argument on this issue, placed heavy reliance on the authority of this Court in Unegbu V. Unegbu (2004) 11 NWLR (Pt.332) 337 @ 349, that, the Petitioner's petition before the trial Court is incompetent because the verifying affidavit, headed in the Court's name was not in compliance with Order V Rule 10 (1) of the Matrimonial Causes Rules, 1983. It is to be noted that, inUnegbu V. Unegbu (supra), the Appellant thereat upon being served with the petition and all the processes, promptly filed a motion seeking for an order of the trial Court to strike out the petition as being incompetent. That was not the case herein because such procedure was not followed and therefore, the objection is deemed to have been waived.** ..... The Appellant herein having not raised objection on issue of defect but rather, proceeded to take further steps in the proceedings is by law estopped from doing so before this Court. The decision of this Court in Unegbu V. Unegbu (supra) relied upon by the learned Counsel for the Appellant is inapplicable herein." **Per MOHAMMED AMBI-USI DANJUMA, JCA (Pp 28 - 32 Paras E - E)**

34. My Lords, the above decision find application in the instant Appeal in that it is the Judgment Enforcement Rules the provided an option through the use of the word MAY on where Garnishee Proceedings may be taken. It was not the Constitution and there is nothing in the Constitution or any substantive law that provides for where Garnishee Proceedings should be taken except the JER. It is in an attempt to follow the JER that one inquires "which court would have the jurisdiction over the subject matter". Without the JER, there would not be any need make such inquiry as the Constitution has already donated the inherent Jurisdiction to all Court to enforce there own judgments. See the case of **ANAKWENZE v. ANEKE & ORS** (1985) LPELR-481(SC) where the Supreme Court held:

"The inherent power of a Court to enforce its judgment does not eo ipso enable another Court with subordinate jurisdiction to enforce the decision of the Court of Appeal. The need for effective enforcement of its decision throughout the Federal Republic of Nigeria gave birth to the provisions of Section 251(2) of the Constitution of the Federal Republic of Nigeria as indeed the need for the enforcement of the decisions of the Supreme Court and the High Court gave birth to the provisions of Sub-section (1) and (3) of Section 251 of the said Constitution. Thus, the provisions of the three subsections read: ..... (3) **The decision of the High Court and 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." Per ANDREWS OTUTU OBASEKI, JSC (Pp 18 - 19 Paras F - E)

35. In the light of the above position of the Supreme Court interpreting the Constitution, it becomes manifest that the "all authorities (including the High Court of the State" and persons in any part of the Federation have the power to enforce the Judgment of the Plateau State High Court. Therefore, the substantive jurisdiction having been donated by the Constitution for enforcement of its judgment, the recommendation by the JER through the use of MAY, is for procedural purposes and an objection to same ought to be raised at the earliest opportunity.

36. We submit that the Appellant, having failed to raise same at the lower court where he was present and afforded the opportunity has waived this objection and same cannot be entertained at this stage. We urge the Court to so hold and find.

ISSUE FOR DETERMINATION IN SUBSTANTIVE APPEAL

1. Whether the Consent of the Attorney General of the Federation (4th Respondent) is required before Garnishee Proceedings can be instituted against the Appellant, and if not, whether the Lower Court possessed the Jurisdiction to grant the Garnishee Order Nisi and Absolute. **(GROUND 1)**

2. Whether the High Court of Plateau State does not have the jurisdiction to entertain Garnishee proceedings against the Appellant despite the fact that the Appellant was sued only in its capacity as the judgment debtors' Bankers and nothing more. **(GROUNDS 3 and 4)**

ISSUE ONE

Whether the Consent of the Attorney General of the Federation (4th Respondent) is required before Garnishee Proceedings can be instituted against the Appellant, and if not, whether the Lower Court possessed the Jurisdiction to grant the Garnishee Order Nisi and Absolute. **(GROUND 1)**

37. Notwithstanding the objection to the competence of Appellant's Issue 1, we shall proceed to canvass arguments against same without prejudice to our objection.

38. We shall commence our argument by firmly submitting that the Appellant is a busy body and has no basis or business fighting a proxy battle for the judgment debtors who have all accepted the judgment in the substantive suit as well as the Garnishee proceedings. It is curious how the Appellant is crying more than the bereaved such that at the lower court, the Appellant blatantly lied to the Court in its affidavit showing cause when it denied being in custody of the funds of the judgment debtors when in paragraph 8 of the said affidavit at page 27 of the record, the deponent deposed as follows:

That I was informed by Mr. Sani Hussaini Kagara a Relationship Manager in the Client Services Office of the Banking Service Department (the Department in charge of managing the account of customers of the Bank) on the 21st August, 2020 in the office at about 12:05pm in the course of official briefing in respect of this matter, **that the Bank does not maintain accounts for the 1st, 2nd and 3rd Judgment Debtors.**

39. When the 1st Respondent proved through Exhibits 1 and 2 at pages 32 and 33 of the record that the Appellant indeed had custody of the judgment creditors' funds, the lower court found as a fact that indeed the Appellant was in custody of the judgment debtor's funds. The lower Court at page 93 of the record of appeal unequivocally held as follows:

> **Therefore, the garnishee cannot be said to have no funds of the judgment debtors domicile in the bank.** I hereby make the order nisi earlier made in this case on the 12th August, 2019 absolute

40. My Lords, this holding and finding of the lower Court was not appealed against. This invariably means that the Appellant has accepted the finding of fact and by implication it was lying in the face of the court when it denied being in custody of the judgment debtors' funds. We submit that this level of desperation employed by the Appellant to fight the battles of the judgment debtor has driven it to lie to the Court and we urge Your Lordships to condemn and deplore this conduct by the Appellant.

41. The Supreme Court and even this Court in several cases have settled how Garnishees who have metamorphosed into busy bodies fighting the battles of indolent judgment debtors should be treated. The Apex Court has set the foundation and established a new vista in our jurisprudence in quite a number of recent cases such as the case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** (2017) LPELR-43940 (SC), (2018) 7 NWLR (PART 1618) 294 where the Supreme Court held at pages 350 E-G:

> **I must say that the garnishee has taken so much interest in this case and appear to have forgotten its role as a banker to the Federal Government. The role of a garnishee in any garnishee proceeding is delimited. As rightly argued by the counsel for the 1st and 2nd respondents, it is not envisaged that after a judgment creditor has gone through the rigours to establish his rights through the legal system, that the garnishee, who is asked to surrender the judgment debtor's money in its possession should engage the judgment creditor in another bout of legal battle.** See Order VIII Part II of the Judgments (Enforcement) Rules. Basically, the restrictive role and legal duty of a garnishee in a judgment enforcement proceeding is to conscientiously and **truthfully** appear before the Court in order to disclose the judgment debtor's state of Account in its custody."

42. In a more recent case still relying on the case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS (supra)**, the Supreme Court still towed the

same lane in the interest and pursuit of justice in the case of **OBOH & ANOR v. NIGERIA FOOTBALL LEAGUE LTD & ORS (2022) LPELR-56867(SC)** where the Court held:

> "**It has to be stated that it is not the role of the garnishee to fight a proxy war against the judgment creditor on behalf of a judgment debtor and my learned brother, Ejembi Eko captured it well in the case of GTB Plc VS Innoson Nigeria Limited (2017) 5 SC (Part 1) 68 at 93 where he said: "It is not for a garnishee to fight the cause of a judgment debtor who either accepts the judgment against him and does nothing about it, or who may be indolent to fight his cause. No power in law inheres in the garnishee to make himself a busy body and proceed like Don Quixote the Knight errant, to fight the cause of the judgment debt or who is his customer.** A judgment debtor whose money or property is seized or attached through garnishee proceedings in excess of the judgment sum has several options in law to deploy to forestall such unwarranted seizure or attachment." In CBN v. Interstella Communications Ltd & 3 Ors (2018) All FWLR (Pt.930) page 442 at 529 Ogunbiyi JSC said: "The role of a garnishee in any garnishee proceedings is delimited. As rightly argued by the Counsel for the 1st and 2nd Respondents, it is not envisaged after a judgment creditor has gone through the rigours to establish his rights through the legal system, that the garnishee, who is asked to surrender the judgment debtor's money in its possession should engage the judgment creditor in another bout of legal battle. See Order VIII, Part II of the Judgment (Enforcement) Rules." **Per MARY UKAEGO PETER-ODILI, JSC (Pp 56 - 57 Paras D - E)**

43. The above recent position of the Supreme Court has been applied by this Honourable Court in a plethora of recent cases where this Court has put a stop to overzealous garnishees who put all forms of stumbling blocks before a successful litigant who has gone through the rigours of litigation only to start afresh another battle for the fruits of his labour. See the case of **CBN v. OCHIFE & ORS (2020)** LPELR-52495(CA) where this Court held:

> "At this point, let me clearly state that garnishee proceeding is that which intends to achieve the result of enforcing judgment of the trial Court by paying the judgment debt ordered by the trial Court to the judgment creditor. The law which is the sheriff and Civil Process Act, had laid out the mode of enforcing the judgment of the trial Court, the mode of enforcement through garnishee proceeding appears to be more effective and potent for monetary judgment debts. In the case of CBN V. Interstella Communications Ltd & Ors (2018) 7 NWLR (Pt. 1618) 294, 350, Ogunyibi, JSC, explained the role of a garnishee proceedings as follows: The role of Garnishee in any Garnishee proceeding is delimited. As rightly argued by the counsel for the 1st and 2nd respondents, it is not envisaged that after a judgment creditor has gone through the rigors to establish his right through the legal system, that the garnishee, who is asked to surrender the judgment debtor's money in its possession should engage the judgment creditor in another bout of legal battle. See Order VIII Part II of the Judgments (Enforcement) Rules.

Basically, the restrictive rote and legal duty of a garnishee in the judgment enforcement proceeding is to conscientiously and truthfully appear before the Court in order to disclose the Judgment Debtor's state of account in its custody. It is no wonder therefore that the lower Court while quoting the Court of Appeal case of Oceanic Bank Plc v. Oladepo & ANOR (2012) LPELR - 19670 held the view that it is not the business of a Garnishee to undertake to play the role of an advocate for a judgment debtor by trying to shield and protect the money of the judgment debtor... **By the rule of jurisprudence, no justice will be done to a garnishee, neither will it be denied any legal right when made to give up the judgment debtor's money in its custody. It is also inequitable for a garnishee to continue to latch on to the money that does not belong to it when the judgment debtor has conceded the judgment. 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.** The position of the law is as rendered by the Supreme Court in Gwede v. Delta State House of Assembly & Anor., (2019) LPELR - 47441 (SC). The dictum of Okoro, JSC is as follows:- "A few words on garnishee proceedings. A garnishee proceeding is usually commenced by an ex-parte application made to the Court having jurisdiction to hear the matter by the judgment creditor and the orders of the Court usually come in two steps. The first is a garnishee order NISI. Simply, NISI is a Norman - French word which means "unless". It is therefore an order made, at that stage that the sum covered by the application be paid in to Court or to the judgment creditor within a stated time unless there is sufficient reason given by the party on whom the order is directed why the ordered should be made. Such reasons could be that he does not hold any money belonging to the judgment debtor or that such money belonging to the judgment debtor in his possession is a subject of litigation or has been assigned to a third party or any other legal and reasonable excuse. If no sufficient reason is given, the garnishee order is then made absolute and that ends the matter in that the party against whom the order absolute is made liable to pay the amount specified in the order to the judgment creditor. The Court then becomes functus officio as far as that matter is concerned in that the judge who decided the matter is precluded from again considering the matter even if new evidence or argument are presented to him. See Union Bank of Nigeria Plc v. Boney Marcus Industries Ltd & Ors., (2005) 13 NWLR (PT. 943) 654, Choice Investments Ltd v. Jeromnimon (Midland Bank Ltd. Garnishee) (1981) 1 All ER 225 at 328, Guarantee Trust Bank Plc v. Innoson Nig., (2017) LPELR - 42368 (SC)." **The appellant in this appeal has no justifiable reason to**

contest the order of the lower Court. This appeal has again shown the modern trend of a garnishee joining the contest of the substantive litigants to fight a proxy war for the judgment debtor. This is no longer to be encouraged or tolerated in a garnishee proceeding." Per STEPHEN JONAH ADAH, JCA (Pp 27 - 31 Paras F - F)

44. We also refer you Lordships to the case of **CBN v. JOD PARTNERSHIP LTD & ANOR (2021) LPELR-53217(CA)** where this Court held:

"...The subject matter of the action leading to this appeal is a case of simple contract relating to debt owed to the 1st Respondent to the 2nd Respondent. In effect the lower Court is and was imbued with jurisdiction to deal with the subject matter of the action notwithstanding that Appellant was later brought in as a Garnishee. **In any event one wonders the need for the Appellant to now be weeping more than the bereaved. The National Defence college filed processes in the case and even fought to defend the action and there is absolutely no evidence before this Court to show that the 2nd Respondent contested the judgment of lower Court in favour of the 1st Respondent against the 2nd Respondent. There is even no basis for the Central Bank to be fighting tooth and nail to have the Order NISI and order absolute made by the lower Court set aside when National Defence College did not bother itself appealing against the judgment given on the undefended list by lower Court.** ..... **The Appellant cannot and is not allowed under the law to fight the battle of the Judgment Debtor since the 2nd Respondent who was adjudged the judgment debtor is deemed to be a party to the Garnishee proceedings under Section 83 of the Sheriffs and Civil Process Act.** .....I must say that the garnishee has taken so much interest in this case and appear to have forgotten its role as a banker to the Federal Government. The role of a garnishee in any garnishee proceeding is delimited..... **It is not the business of Appellant to challenge jurisdiction of Court or that consent was not obtained on behalf of a docile Defendant and judgment debtor who appears satisfied with the judgment of lower Court and the Garnishee proceedings. Per PETER OLABISI IGE, JCA (Pp 24 - 31 Paras B - E)**

45. See also the case of **CBN v. NEUTRAL RESOURCES LTD & ANOR (2021) LPELR-52903(CA)** where this Court held Per ELFRIEDA OLUWAYEMISI WILLIAMS-DAWODU, JCA at pages 20 - 21:

In my considered view and humbly, the observation of the Court is quite correct, one agrees that the Appellant is "not the judgment debtor as such the appeals that it is pushing cannot be said to have any bearing with ... or otherwise of the judgment debtors in those cases to satisfy the judgment debts". ..... It is pertinent to echo the cautionary words so to speak of the apex Court in the case of **CBN V. INTERSTELLA supra** that:

"It is also inequitable for a Garnishee to continue to latch on to the money that does not belong to it when the judgment Debtor has conceded the judgment."

In the light of the foregoing, the singular issue herein is resolved against the Appellant. In consequence, the appeal cannot be allowed, it is therefore hereby dismissed.

46. In line with the trend and direction adopted by the Courts in recent times, we urge Your Lordships to discountenance the Appellant's submissions and challenge to the lower Court's jurisdiction, for being a busy body fighting a proxy war on behalf of the judgment debtors who have all accepted the judgment of the trial court in the main fundamental rights suit and the garnishee proceedings giving rise to this Appeal. This Court should no longer tolerate such busy bodies.

47. In direct reaction to the Appellant's Contention that it is a public officer and that the consent of the Attorney General of the Federation is required before Garnishee proceedings can be commenced against it, we submit firmly that the Appellant is not a Public Officer as contemplated by Section 84 of the Sheriffs and Civil Process Act and therefore there is no requirement for the consent of the Attorney General of the Federation tp be sought and obtained.

48. We submit that the Appellant as far as Garnishee proceedings are concerned is merely banker of the Government and its agencies and not a public officer as erroneously contended by the Appellant. This was the position maintained by the apex Court of the land when exactly the same argument was canvassed by the CBN in the case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** (SUPRA). The same Appellant in that case canvassed the exact same argument as the instant, which was rejected by the Court when the Supreme Court held:

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 moneys 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 the Federation does not arise. Relevant to this conclusion is again the persuasive authority of CBN V. Ekong (supra) cited also by the appellant's counsel wherein Fabiyi, JCA (as he then was) held thus on his consideration of the purpose for 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 purpose ....." The case of Purification Tech. (Nig) Ltd. v . AG 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, ...

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." Per OGUNBIYI, J.S.C. (Pp. 68-81, Paras. D-C)

49. As can been seen from the apt decision of the apex court above, your Lordships would find that the case of **Ibrahim v. JSC** relied upon by the Appellant herein, which made copious references to the Interpretation Act was considered by the apex court and found not to be applicable in Garnishee Proceedings as in the instant Appeal. From the facts and circumstances of both the Appeal in the **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** (SUPRA) and the instant Appeal, your Lordships shall find that these two cases are on all fours in that;
    a. The Appellant in both Appeals is the same CBN
    b. In both Appeals, the Attorney General of the Federation is a judgment debtor.
    c. In both Appeals, the Attorney General of the Federation acknowledged indebtedness to the Judgment Creditor. While in **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** (SUPRA) he did so expressly, in the instant Appeal, he did so by not appealing against the main judgment in the Fundamental Right Suit that gave rise to the Garnishee Proceedings and also not appealing against the Order Nisi and Order Absolute giving rise to this Appeal thereby accepting liability.

50. Flowing from the rock solid position enumerated by the Supreme Court the above precedence, it becomes manifest that the CBN is not a public officer but merely a bank for the purpose of Garnishee proceedings and there is no need for the consent of the Attorney General of Federation sought and obtained before Garnishee proceedings can be commenced. This Superior reasoning of the apex court was recently followed by this Honourable Court when it rejected the exact contention of

the instant Appellant and followed the precedence set by the Supreme Court after examining all the authorities on the subject including the cases of CBN V Hydro Air Property (supra) and the case of CBN V Njemanze (2015) 4 NWLR (supra) relied upon by the Appellant.See the case of **CBN v. ABUBAKAR (2019) LPELR-48261(CA)** where this Court held:

"From the arguments proffered by both counsel, the issues have been pronounced upon by the appellate Court. It will therefore do us no good to decide the issue based on statutory provisions in disregard to the decisions of the Court. The case of CBN V Hydro Air Property (supra) and the case of CBN V Njemanze (2015) 4 NWLR (supra) are conflicting decisions of the Court of Appeal on the question whether or not the Central Bank of Nigeria is a public officer. In CBN V Hydro Air Property Ltd (supra) decided on 27/3/2014 by Enugu Division, the term "public officers" was defined to include officials of the Central Bank of Nigeria and in that premise, the Court held that the prior consent of the Attorney General under Section 84 of the Sheriffs and Civil Process Act is necessary and mandatory before the judgment of a Court can be properly enforced against a State, and that the prior consent is still required even where the Attorney General is a party in the Suit. In the case of FGN V Interstella Communications & Ors (2015) 5 NWLR (Pt.1463)1 at 37-38 Paras 37-38, Paras H-A, it was held thus: **"While officers of the Central Bank of Nigeria are public officers, it is unacceptable to classify Central Bank of Nigeria as a public officer, because it acts as a banker to the Federal Government in respect of credit balances in the accounts of the Federal Government of Nigeria." The Court also significantly held: "The relationship of a banker to its customer is contractual, hence there is no basis for treating government bank accounts differently. Thus, for the purpose of garnishee proceedings, the CBN acts as a banker to the Federal Government as encapsulated in Sections 2(c), 36 and 39 of the Central Bank of Nigeria Act. That is why the Central Bank of Nigeria also acts as a banker to other banks as provided in Section 41 of the Central Bank Act** (Purification Tech (Nig) Ltd V A-G Lagos State (2004)9 NWLR (Pt.879)665 referred to)" P.38, Paras A-C. The case of CBN V Njemanze & Ors (2015) 4 NWLR (Pt.1449) 276 was decided by Owerri Division of the Court of Appeal on 2nd July, 2014. Therein it was held at pages 287, Paras C-D, 287-288, Paras H-G thus: "The term "public officer" relates to the holder of the office as reflected in Section 318(1) of the Constitution (as amended). Equally, Section 84 of the Sheriffs and Civil Process Act also referred to a public officer as a holder, officer or person holding a public office. In the circumstance officers of CBN are public officers but CBN is not a public officer Shakira & Sons Ltd V Governor of Kaduna State (2013) LPELR-20379 referred to)." At page 286, Paras A-G, of the report, it was held that the definition of public service of the Federation in Section 318(1) of the Constitution clearly excludes artificial persons. Clearly, the decision in CBN V Hydro Air Property Ltd (supra) cannot represent the current or extant position of the law when it comes to the question, whether CBN is a public

officer or not, or the prior consent of the Attorney General of the Federation is required to enforce the judgment of a Court against a Federal Government Agency vide a garnishee proceedings against the Central Bank of Nigeria. **Therefore, as the law now stands, by the decision of the Supreme Court in the case of A-G Rivers State V A-G Bayelsa State (supra) the Central Bank of Nigeria cannot be classified as a "public officer". To my mind, this is in tandem with what I believe is the correct definition given to "public officer" in Section 18 of the Interpretation Act which, amongst other things defines "public officer" thus: "Public Officer" means a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria, 1999 or of the service of a State." It was thus held inter alia, in that case: "... the National Boundary Commission is an agency of the Federal Government, but not such a public officer under the definition of the real term "public officer" as defined in the case of Ibrahim V J.S.C. (supra)." To close on the issue under consideration, I hold that the Central Bank of Nigeria is not a "public officer" within the meaning of the extant law, and therefore the prior consent of the Attorney-General of the Federation is not required to enforce the judgment of a Court against an agency of the Federal Government through a garnishee proceeding initiated against the Central Bank of Nigeria." Per JAMES GAMBO ABUNDAGA, JCA (Pp 17 - 21 Paras D - D)**

51. See also the case of CBN v. FOLUSO & ORS (2021) LPELR-54879(CA) where this Court also very recently held:

> "**However, I completely disagree with the Appellant's contention that the 1st and 2nd Respondents required the consent of the Attorney-General of the Federation to commence garnishee proceedings relying on Section 84(1), (2) and 3(a) of the Sheriffs and Civil Process Act.** The reason is not far fetched. ?In the instant case, it has not been shown that the relationship between the Appellant and the 3rd Respondent is not that of a banker and customer. Indeed, the Central Bank of Nigeria is usually referred to as the "Banker's Bank". **Therefore, the relationship between the Appellant and the 3rd Respondent was that of a banker and customer. In the circumstances, the Appellant was not a public officer within the context of Section 84 of the Sheriffs and Civil Process Act. Accordingly, the 1st and 2nd Respondents did not need the consent of the Attorney-General of the Federation to commence their garnishee proceedings as they did.** I rely for this position on the case of Central Bank of Nigeria V. Interstella Communications Ltd & 3 Ors (2018) 7 NWLR (Pt. 1618) 294 (SC) also reported in (2017) LPELR-43940 (SC), per Ogunbiyi, JSC (pp. 61-81 paras D-C). In his book, "Enforcement of Judgments" the Learned author, Chief Afe Babalola, SAN, stated thus on page 120: **"It must be noted that monies paid into a bank by a judgment debtor are held in its hands in its capacity as a banker and not as a public officer even if the money is that of a public body. Bankers hold monies on behalf of their customers in a**

> **commercial capacity and not as an arm of government functionaries, thereby, making the consent of the Attorney-General unnecessary before an ex-parte application for garnishee order nisi could be commenced." It is therefore clear, that the consent of the Attorney-General was not required to initiate the garnishee proceedings."**

See also **CBN v. OCHEME** (2019) LPELR-51286(CA) where this Court still while considering the Interstell case held:

> **"...the Central Bank of Nigeria is not a public officer in respect of which the consent of the Attorney General of the Federation is required for the commencement of Garnishee Proceedings against it.** See Central Bank of Nigeria LTD v Interstellar Communication LTD (2015) 8 NWLR part 1462 P 456 at 506 Para D-H per Abba Aji JCA (as he then was); CBN v Njemanze (2015) 4 NWLR part 1449 P.276 at 286 - 288 Para H-H per Agbo JCA." **Per OLUDOTUN ADEBOLA ADEFOPE-OKOJIE, JCA (Pp 18 - 19 Paras F - B)**

52. Flowing from the case of **CBN v. FOLUSO & ORS (supra)**, it becomes clear that even if the person in whose favour the CBN holds funds is a public body, the CBN remains merely a bank to that public body and cannot enjoy the protection of a public officer as contemplated by Section 84 of the Sheriffs and Civil Process Act. Therefore, the consent of the Attorney General of the Federation is not required.

52. What is more, we submit that it is absurd and contrary to the principles of the Rule of Law to expect a judgment creditor to obtain the consent of the judgment debtor before enforcing the judgment against him (judgment debtor). It beats common sense and the spirit of the law to mandate a judgment debtor to obtain the consent of his debtor before taking steps to enforce the judgment. We submit that that will amount to taking back with the left hand what the right hand has given. Because no judgment debtor will give consent for the enforcement of judgment against it. The law is not designed or intended to take back with the left hand what the right hand has given. If that was the intention of the lawmaker, it would practically be impossible and impracticable to enforce judgments of courts and that would not augur well for our democracy and the rule of law which we strive to attain. The Supreme Court again adopted this approach in resolving exactly the same contention in the case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** (supra) where My Lord **OGUNBIYI, J.S.C. at Pp. 68-81, Paras. D-C** held:

> **"The appellant's contention herein centres on the provision of Section 84(1) of the Sheriffs and Civil Process Act which counsel submits was not complied with in that the consent of the Attorney-General of the Federation was not first sought and obtained before the order Nisi was made. The historical background of the Garnishee Proceeding, in the trial Court and lower Court, which took its root from Suit No.**

FHC/UM/CS/95/2004 has been explicitly outlined earlier in the course of this judgment.

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 of our democracy. This Court in NPA V. CGFC SPA (1971) NLR (P.11) 463 held that a section of a statute should not be given an undue emphasis, that it did not possess, 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.....**

Consequently, the Garnishee Proceedings against the Appellant was rightly commenced and I so hold.

54. My Lords, the above quoted pronouncement of the Supreme Court has explicitly put to rest any contention about the need for the AGF's consent especially where he is a judgment debtor in a garnishee proceedings. This Honorable Court has also adopted and followed the above precedence of the Supreme Court in the case of **CBN v. JOD PARTNERSHIP LTD & ANOR (supra).**

55. We are not unmindful of the Appellants failed attempt to distinguish the unambiguous case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS (supra)** from the instant Appeal. In paragraphs 4.21 – 4.29 of its Brief of Argument. The basis for the attempted distinction is that;

a. in the **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** case, the AGF was not a nominal / neutral party while in the instant Appeal, the AGF is a neutral / nominal party.

b. that in the **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** case, the CBN was sued as a banker to the Federal Government and in which the Federal Government is the principal judgment debtor as against the instant case where the Federal Government is not the Principal judgment debtor.

56. We respectfully submit that these points collectively amount to a distinction without a difference. We shall address the points immediately. On the first point, we submit that the contention that the AGF is a nominal party was canvassed by the AGF (4th Respondent) at the lower court as Issue 3 of his objection, and the Lower Court agreed with the 1st Respondent's contention that it was not open at the stage of execution for the AGF to seek to deny liability as a nominal party when he failed to appeal against the decision which gave judgment against him. The Court at pages 90 – 92 resolved this issue in favour of the 1st Respondent and against the AGF (4th Respondent). This decision of the lower court was not challenged on appeal and still stands extant. We submit therefore that the question whether the AGF is a nominal party or not has been settled. The 4th Respondent himself has accepted that fact by not appealing against same. As it stands, the AGF is not a nominal party and is a judgment debtor as the other judgment debtors.

57. In other words, the AGF in the instant appeal is as much a judgment debtor in the other judgment debtors. He is therefore not a nominal / neutral party as the Appellant suggests. The position of the AGF in the instant appeal is exactly the same as he was in the INTERSTELLA's case. In the Interstella's case the AGF was a judgment debtor along with the other defendants at the trial court just as it is in the instant appeal. Therefore, in both cases the AGF is not a nominal party. We submit that it cannot be said that a party against whom monetary judgment has been entered against is a nominal party in a garnishee proceedings.

58. In any event, we submit that once this Court comes to the conclusion that the relationship of the Appellant and the judgment debtors is that of a bank and its customers as already found by the lower court and conceded to by 2nd – 4th Respondents, it is immaterial whether the 4th Respondent is a party to the proceedings or not, much less a nominal party or an actual judgment debtor. The fact that the relationship is a customer banker relationship validates the garnishee proceedings without the need for the consent of the AGF (4th Respondent). By the way, even the Appellant acknowledges this banker customer relationship in its paragraph 8 of its Affidavit showing cause. See page 27 of the Record.

59. The above position was given strength and stamina by this Court in the very recent case of **CBN v. MESSRS HYBRID ENGINEERING CO. LTD (supra)** where this Court analyzed and dissected the case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** and found no distinction with the case which is on all fours as this case. In fact, this Court categorically held that the case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS** has stripped off the title of a public officer on CBN thereby taking away the need for consent of AGF even

when the AGF was not a party to the suit. At page **20 - 22 Paras E - D** of the report, this Court held:

> "The appellant has not shown that its relationship with the judgment debtors: The Inspector General of Police; Assistant Inspector-General of Police 'C' Department; and The Nigeria Police Force - earlier listed as the 2nd, 3rd and 4th respondents, respectively, is or was not that of an ordinary banker and customer relationship. I find succour, in respect of this reasoning, in the decision of the apex Court in Central Bank of Nigeria v. Interstella Communications Ltd. & 3 Ors. (supra) at 346, where the Court elaborately held as follows: "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 moneys 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 the Federation does not arise".** Also, in the case of Purification Techniques (Nig.) Ltd. v. Attorney-General of Lagos State (2004) 9 NWLR (Pt. 879) 665 at 679-680 per Galadima, JCA (as he then was); this Court held that: "There is absolutely no basis for treating government accounts any differently from bank accounts of every other juristic personality or customers..." **Per MOORE ASEIMO ABRAHAM ADUMEIN, JCA (Pp 20 - 22 Paras E - D)**

60. In his contribution, **BATURE ISAH GAFAI, J.C.A.** held:

> I have observed in many similar appeals that counsel now rely on cite law publishers' summarized ratio of the decision in Interstella Communications Ltd (supra) but clearly without having read the entire decision. The decision in Interstella Communications Ltd is undoubtedly a locus classicus in the area of statutes of limitation but great care must be taken to uphold and advance the proper ratio decidendi upon which the decision in that case was premised. I have had cause to read the decision at several times in appeals before this Court and my humble understanding of the entire decision definitely does not admit of the scenario now played by the Appellant. If anything, the role of the Appellant in this appeal can be equated with the role of the Attorney General whose consent, just like in the present appeal, was held by the Supreme Court

to be unnecessary on the peculiar facts and circumstance of that appeal. Indeed, in that appeal, the Attorney General was not shown to have expressly renounced his prerogative of granting the consent prescribed under Section 84(1) of the Sheriff and Civil Process Act but the acts and roles played by the Attorney General in all the stages of the subject matter that led to the appeal clearly showed that it would be unfair to yet again seek his consent for the institution of those garnishee proceedings. Now, in the case at hand, the role of the Appellant is even much worse by its express renunciation, through the withdrawal of the Preliminary Objection it was meant to raise to challenge the garnishee proceedings on the ground of absence of consent of the Attorney General.

61. My Lords, this very division of the Court of Appeal as recently as last year had course to also analyze the case of Interstella and it came to the conclusion that the CBN is not a public officer for the purpose of Garnishee proceedings. This is regardless of whether the AGF is a party or not. In that case, the AGF was not even a party yet this Court per UGO, JCA in **CBN v. UMAR & ORS** (2021) LPELR-55565(CA) held:

> "there is the decision of this Court of 7th June, 2019 in Appeal No: CA/J.46/2018; Central Bank Of Nigeria v. Zenith Bank Of Nigeria Plc & Anor which also happens to be more recent than all the other decisions of this Court cited by appellant. There this Court (with my humble self in lead judgment) placing reliance first on the decision of this Court (Abba-Aji, JCA, as he then was) in C.B.N. v. Interstella Communications Ltd (2015) 8 NWLR (PT. 1462) 512 and its subsequent confirmation by the apex Court on appeal in C.B.N. v. Interstella Communications Ltd (2018) 7 NWLR (PT 1618) 294 (S.C), as per the lead judgment of Ogunbiyi, JSC, rejected this same argument of appellant also incidentally put forward by the same chambers of Nnamonso Ekanem (S.A.N.) & Co., on behalf of Central Bank of Nigeria in that case. There, I said in lead judgment thus: "I shall say, straight away, **that appellant's contention that it is a public officer within the context of Section 84 of the Sheriffs and Civil Process Act and it is in that capacity it was in custody of Zenith Bank's funds so 2nd respondent was required by that same provision to first obtain the consent of the Attorney-General of the Federation before commencing garnishee proceedings for attachment of Zenith Bank's funds is a complete misconception. Incidentally, this same contention of appellant, which it also made in C.B.N. v. Interstella Communications Limited, was rejected first by this Court in its decision (Abba-Aji, J.C.A., as he then was) in C.B.N. v. Interstella Communications Ltd (2015) 8 NWLR (PT 1462) 512 and by the apex Court on further appeal in C.B.N. v. Interstella Communications Ltd (2018) 7 NWLR (PT 1618) 294 (S.C).** The apex Court by its judgment (Ogunbiyi, J.S.C. in lead judgment) tackled the argument this way at p. 346: "The other leg of the argument is where the appellant's counsel holds out that CBN is 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 the 1st and 2nd respondents' counsel, the appellant is not a public officer in the context of Section 84 of the SCPA [Sheriffs and Civil Process Act], when regard is had to the history of this appeal. Section 84 has been earlier reproduced 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. "... "The appellant does not stand as a public officer in this situation. Therefore, it follows that the need to seek the consent of the Attorney-General of the Federation does not arise.** "... "The case of Purification Tech (Nig.) Ltd v. A.G. Lagos State (2004) 9 NWLR (PT 879) 665 is also on all fours." (italics mine) It has not been brought to my attention by appellant or its counsel that that position of this Court has been upturned or departed from by the apex Court on appeal or in any other case before it. **Yes, I am not unaware of the argument in some quarters that the decision of the apex Court in C.B.N. v. Interstella Communications Ltd (2018) 7 NWLR (PT. 1618) 294 (S.C) was rather based on the fact that the Attorney General was in that case held to have given his consent by implication to the garnishee proceedings, he having earlier instructed some payment of the judgment debt in issue before the commencement of the garnishee proceedings. It is thus argued that that fact is the real basis or ratio decidendi of C.B.N. v. Interstella Communications Ltd (2018) 7 NWLR (PT 1618) 294 (S.C) and not its pronouncement distinguishing Ibrahim v. JSC (supra) and affirming emphatically that "The appellant [same Central Bank of Nigeria) does not stand as a public officer in this situation. Therefore, it follows that the need to seek the consent of the Attorney-General of the Federation does not arise." I am not by any means persuaded by that argument given the very clear pronouncement of Ogunbiyi, JSC, in her lead judgment as shown above directly distinguishing its earlier Limitation statute/Public Officers Protection Law case of Ibrahim v. JSC (supra) where public officer was defined as including an artificial public persons or office as shown in the passage of her judgment earlier reproduced. It has to be noted too that her Lordship even went further to say that this Court's decision in Purification Tech (Nig.) Ltd v. A.G. Lagos State & Ors (2004) 9 NWLR (PT. 879) 665 is 'on all fours' with C.B.N. v. Interstella Communications Ltd (2018) 7 NWLR (PT 1618) 294 (S.C). Incidentally, Purification Tech (Nig.) Ltd v. A.G. Lagos State & Ors (supra) did not involve any issue of the Attorney General giving a prior instruction for payment of judgment debt. It was rather simply about the instant issue of whether prior consent of Attorney General is a condition precedent under Section 84 of the Sheriffs and Civil Process Act to commence garnishee proceedings to attach debts of a judgment debtor customer of the Central Bank of Nigeria which funds it holds as a banker to the judgment debtor. It is thus my humble opinion, still, that the decision of the apex Court in**

C.B.N. v. Interstella Communications Ltd (2018) 7 NWLR (PT 1618) 294 was simply to the effect that prior consent of Attorney General is not a condition precedent under Section 84 of the Sheriffs and Civil Process Act for commencement of garnishee proceedings to attach debts of a judgment debtor/customer of the Central Bank of Nigeria. In any case, even if the finding of the apex Court in C.B.N. v. Interstella Communications Ltd, to the effect that the Attorney General by his actions in that case by directing payment of the debt prior to the commencement of the garnishee proceeding had given his consent to the attachment, that would only be one of two rationes decidendi for the decision, and not that it in any way reduces to a mere obiter dictum its clear decision that Attorney General's consent is not needed to commence garnishee proceedings against the Central Bank of Nigeria to attach debts due to its judgment debtor/customer, for as it was said by Karibi-Whyte, JSC, in lead judgment in Aeroflot Soviet Airlines v. United Bank For Africa Ltd (1986) 3 NWLR (PT 27) 188 @ 199 Para. D-E: "It is well settled that where two reasons are given for a judgment they may both constitute the ratio decidendi for such judgment. See Jacobs v. L.C.C. (1950) 1 ALL E.R. 737, London Jewellers Ltd v. Stentorough (1934) 2 K.B. 206. A reason given by a judge is not to be regarded as obiter dictum merely because another reason equally valid was also given." **Per BOLOUKUROMO MOSES UGO, JCA (Pp 3 - 9 Paras F - E)**

62. To lend credence to the above trite position of the law, the President of this Court, **MONICA BOLNA'AN DONGBAN-MENSEM, JCA** also applied the Inerstella's case in line with the 1st Respondent's submission in the case of **CBN v. LIDAN ENGINEERING LTD & ORS (2021) LPELR-52622(CA)** where the Court held:

"...In resolving this issue, it is pertinent to reproduce the provisions of Section 84 of the Sheriffs and Civil Processes Act as follows; "..... In determining this issue, the question is whether or not the Appellant is a Public Officer in relation to the instant case. The relationship between the Appellant, Central Bank of Nigeria (CBN) and the Judgment Debtors is said to be one between a banker and its customer and by the provisions of Sections 2(c) and 36 of the CBN Act, the CBN acts as a banker to the Federal Government and its Agencies. Government bank accounts are to be treated no differently from the bank accounts of every other juristic personality or customers. The CBN therefore does not fall under the category of Public Officers in the context of Section 84 of the Sheriffs and Civil Process Act. In the case of CBN V. INTERSTELLAR COMMUNICATIONS LTD & ORS (2017) LPELR - 43940 (SC), the Apex Court held thus; "It is apparent herein, on the facts of this case that the CBN acts as a Banker to the Federal Government with respect to Government funds in its custody. .....

Having established that the Appellant is not a Public Officer, the requirement of obtaining the consent of the Hon. Attorney-General of the Federation

before funds can be released to the 1st-4th Respondents does not apply to the instant case..... **Judgment creditors should not be deprived of their monies in the name of requiring consent from the Hon. Attorney-General as other Federal Government Agencies will exploit this avenue to owe private bodies, which would be harsh and unfair. In the interpretation of Laws and Statutes, it is important to put into consideration, the intendment of the makers of the legislation.** "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. " Per Ogunbiyi J.S.C. in the case of CBN V. INTERSTELLAR COMMUNICATIONS LTD & ORS (Supra), See also the case of PURIFICATION TECH (NIG.) LTD V. A.G. LAGOS STATE (2004) 9 NWLR (PT 8790) 665. **In resolving this issue against the Appellant, I am bound by the decision of the Apex Court in CBN V. INTERSTELLAR COMMUNICATIONS LTD & ORS (Supra) that the Appellant is not a Public Officer, therefore the consent of the Hon. Attorney-General of the Federation is not required." Per MONICA BOLNA'AN DONGBAN-MENSEM, JCA (Pp 10 - 14 Paras B - C)**

63. Flowing from the above, we submit that there is no distinction between this case and the **CBN v. MESSRS HYBRID ENGINEERING CO. LTD (supra)** and **CBN v. UMAR & ORS** (supra) cases which also relied on the Inerstella case. As a matter of fact, by Exhibits 1 and 2 at page 32 and 33 of the record, the judgment debtors maintain banking relations with only the CBN. This informs the basis why the Supreme Court held in the Interstella Case as follows:

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

64. We urge your Lordships to find that there is no distinction between the case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS (supra)** and the instant case as they are on all fours just as found in the case of **CBN v. MESSRS HYBRID ENGINEERING CO. LTD (supra)** where the AGF was not even a party and yet this Court found that the consent of the AGF was not required due to the nature of banker customer relationship between the judgment debtor and garnishee. This position is further solidified by the self admitted fact that the Appellant treats the judgment debtors as customers, so much so that it has a department for banking services which is in charge of **managing the accounts of customers of the bank**. It was this department that was referred to when the Garnishee Order Nisi was served on the Bank. See the paragraph 8 of the Appellant's Affidavit at page 27 of the record.

65. In paragraphs 4.25 and 4.29 the Appellant cited and relied upon the Court of Appeal cases of **UNITY BANK PLC V. IGALA CONSTRUCTION LTD & ANOR** reported in 2020 and the case of **AKPAN V. EFCC & CENTRAL BANK OF NIGERIA** reported in 2021. We submit that these cases are inapplicable and we shall demonstrate same anon.

66. The most recent position of this Court especially on the import and application of the case of **CBN v. INTERSTELLA COMMUNICATIONS LTD & ORS (supra)** is as stated by this Court in **CBN v. MESSRS HYBRID ENGINEERING CO. LTD (supra)** and **CBN v. UMAR & ORS (supra).** So far, this position has settled the question in dispute whether the CBN is a public officer as contemplated by the SCPA. We urge your Lordships to reject the same argument severally canvassed by the instant Appellant in favour of the latest position taken by this Court.

ISSUE TWO

> Whether the High Court of Plateau State does not have the jurisdiction to entertain Garnishee proceedings against the Appellant despite the fact that the Appellant was sued only in its capacity as the judgment debtors' Bankers and nothing more. **(GROUNDS 3 and 4)**

67. In arguing this issue, we adopt our submission in Ground 3 of our preliminary objection argued above. We further wish to add that the State High Court has jurisdiction to execute its own judgment and this jurisdiction is donated to it by the Constitution. The JER cannot therefore deprive the High Court of the State the jurisdiction to entertain Garnishee proceedings. At best, it can only permit the Federal High Court to shear the jurisdiction with the State High Court but not deprive the State High Court with the Constitutionally vested jurisdiction.

68. We further submit that assuming without conceding the Section 251 of the Constitution which makes no provision of enforcement of judgments is relevant, we submit that the Enforcement of this Judgment does not relate to any of the items listed in Scetion251 (1) (d) of the Constitution. The reason is simple. Having firmly established that the relationship between the Judgment debtors and the Garnishee is that of banker and customer, any res that borders on this banker customer relationship falls within the exceptions to the exclusive jurisdiction of the Federal High Court. Section 251 (1)(d) provides:

> 251 (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters-

(d) connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures:

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank;

69. By the above constitutional provision, it is clear that any dispute that involves a banker customer relationship is excluded from the exclusivity of the Jurisdiction of the Federal High Court. Therefore, since the import of Order VIII Rule 2(a) is that the Court with jurisdiction to entertain Garnishee proceedings is the court which is empowered to entertain a dispute between the Judgment debtor and the Garnishee.

70. By necessary inference, since the relationship between the instant judgment debtors and the garnishee as settled by the numerous decisions cited in our earlier argument is that of a banker customer, both the state High Court and the Federal High Court shear concurrent jurisdiction over the proceedings. See the case of **GTB v. SENIOR STAFF ASSOCIATION OF NIGERIA POLYTECHNICS, FEDERAL POLYTECHNICS, ADO- EKITI CHAPTER & ORS (2021) LPELR-55541(CA)** where this Court held:

"On the dispute arising from an individual customer and his bank, the law is settled that the States High Courts and Federal High Court have concurrent jurisdiction to entertain such cases in view of the proviso to Section 251(1)(d) of the Constitution. That sub-section provides that: .....: Provided that this paragraph shall not apply to any dispute between an individual and his bank in respect of transaction between the individual customer and the bank;. See NDIC VS. OKEM ENTERPRISES LTD (2004) 10 NWLR (PT. 880) 107 (SC) or (2004) LPELR-1999 (SC), the Apex Court held that: ..... A dispute between an individual customer and his bank in respect of transactions between them can hardly affect these vital interests. **So the proviso in Section 230(1)(d) relaxes in that regard the exclusive jurisdiction given to the Federal High Court. KUTIGI, J.S.C. as he then was (later CJN and of blessed memory) held at page 75, parag. C-D of the case that: For the avoidance of doubt, the conclusion is that under the proviso of Section 251(1)(d) of the 1999 Constitution, the Federal High Court has concurrent jurisdiction with States High Courts in the matter stated in the proviso** (see Federal Mortgage Bank of Nigeria v. NDIC (1999) 2 NWLR (Pt. 591) 333; Afribank Nigeria Plc. v. K.C.G. Nigeria Ltd. (2001) 8 NWLR (Pt. 714) 87." **Per BALKISU BELLO ALIYU, JCA (Pp 22 - 24 Paras F – F)**

71. Given the trite position of the law as settled above, we submit that by virtue of the banker customer relationship between the Garnishee and the Judgment Debtors, the State High Court is well within its jurisdiction to entertain the instant Garnishee proceedings and the Orders Nisi and Absolute remains valid.

72. We further submit that the single treasury account policy does not in any way affect the banker customer relationship between the Judgment Debtors and the Garnishee. In fact, that is what solidified the said relationship.

73. Also, the Appellant argued in its brief that it is an agency of the Federal Government therefore it cannot be sued in a State High Court, our simple answer to this argument is that where the subject matter of a suit falls within the jurisdiction of the State High Court, it does not matter that the one of the parties is an agency of the Federal Government, the State High Court will still have the jurisdiction to entertain the suit. See the case of **BANK OF INDUSTRY LTD. v. OBEYA (2021)** LPELR-56881(SC) where the Supreme Court held:

> **"The other arm of this appeal is that the Respondent sued the Appellant for his professional fees amounting to debt owed. The fact that the Appellant is an agency of the Federal Government does not bar or limit the jurisdiction of the High Court of a State or the FCT High Court from assuming its original and legitimate jurisdiction for debt recovery or simple contracts.** Per UWANI MUSA ABBA AJI, JSC **(Pp 40 - 42 Paras C - A)**

74. In paragraphs 5.08 – 5.09 of the Appellant's brief, the Appellant sought to find shelter in Subsection 1(a) of Section 251 of the Constitution dealing with actions affecting the revenue of the Federal Government and its agencies.

78. In reply, we submit from on the onset that there is nothing on record and no evidence exists to show that the sums sought to be attached is the revenue of the Federal Government or any its agencies. In the case of **CBN v. MESSRS HYBRID ENGINEERING CO. LTD** (supra) the Court found that failure to give evidence on the purpose of the funds attached leaves room for speculations as to whether the funds are part of the revenue of the Government or not and the Court would not embark on speculations to favour a party. At pages 19 - 23 of the report, this Court held:

> *Assuming further that the appellant can validly raise the issue of non-compliance with Section 84 of the Sheriffs and Civil Process Act in this appeal, the issue cannot be resolved in the appellant's favour, for reasons which include the following:*
>
> 2. *It has been held that the rationale for obtaining the consent of the Attorney-General of the Federation, or even the Attorney-General of a State, as prescribed by Section 84 of the Sheriffs and Civil Process Act 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" – per Peter-Odili, JSC in Central Bank of Nigeria v. Interstella Communications Ltd. & 3 Ors. (supra) at 362.
See also Christopher Onjewu v. Kogi State Ministry of Commerce & Industry (2003) 10 NWLR (Pt. 827) 40 at 89.
(i) In this case, there is nothing to show the purpose or purposes earmarked for the funds attached in satisfaction of the respondent's debt.
(ii) There is also nothing to indicate that the (Federal) Government does not know anything about the judgment debt.
(iii) In the absence of facts relating to (i) and (ii), the Court is left at the mercy of speculation.
(iv) It is trite law that in performing its judicial duties or functions, a Court has no responsibility to speculate. In fact, a Court of law has a duty to refrain from speculation, for speculation is nothing but a mere curious guesswork and it is not part of a judicial exercise.

79. Flowing from the above, we urge your Lordships not to indulge in speculation on the assumption that the sum attached is the revenue of the Federal Government or its agencies not minding that the Appellant lied that it did not maintain account for the judgment debtors.

80. In paragraphs 5.10 – 5.14 of the Appellant's brief, the unreported case of **CBN V. PIUS EFFIONG & 5 ORS** was cited and relied upon by the Appellant to push their point on jurisdiction of the Plateau Sate High Court to entertain the Garnishee Proceedings.

81. Our simple answer in response to the Appellant's contention and the authority cited is that this Honourable Court has changed course. The position as canvassed by the Appellant is no longer the law as the position and posture taken by this Honourable Court in favour of substantial justice is as captured in the very recent case of **CBN v. ACCESS BANK & ORS** (2022) LPELR-57017(CA) decided on the 10th March, 2022 where this Court held:

> "It is also settled that the jurisdiction of the Federal High Court is circumscribed by Section 251(1)(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and it provides the subject matter over which the Federal High Court can exercise jurisdiction. The Constitution also used the word "NOT WITHSTANDING" to circumscribe the jurisdiction. In considering Section 251(1)(d) of the Constitution, both the subject matter and the parties are important. The provision is so clear, it is plain, and its applicability to the situation at hand is to say the least inadequate. This is so because whichever way one looks at jurisdiction, garnishee proceedings though clearly a means of enforcement of judgments, cannot be properly termed as substantive civil or criminal suit covered by the provisions of Section 251(1) of the Constitution, and in any event, as rightly

pointed out, the Appellant was not even a party in Suit No. KDH/KAD/473/2009 before the trial Court, which delivered the judgment now sought to be enforced. The Appellant only became a party for the purpose of the garnishee proceedings after the 1st Respondent sought to enforce the judgment of the Court. Also, the issues at the trial Court did not have related matters of banking, or "...connected with or pertaining to banking..." within the meaning and purport of Section 251(1)(d) of the Constitution as it relates to the Appellant. **In the circumstances therefore, this Court is of the firm view that the High Court of Kaduna State had the jurisdiction to entertain the matter of the garnishee proceeding as it did on this score.** It also is clear from reading the provisions of **Order VIII Rules 2, 3 and 9 of the Judgment (Enforcement) Rules and Section 7(1)(a)(b) and 8 of the Federal High Court Act, that they are procedural in nature and not capable of conferring the Court with jurisdiction. It only laid down the procedure to be followed to enforce the judgment of Court by way of garnishee proceedings**. The role of a garnishee in any garnishee proceeding is delimited. It is not envisaged that after the judgment creditor has gone through the rigors of establishing his rights through the legal system, that the garnishee, who is asked to surrender the judgment debtor's money in its possession should engage the judgment creditor in another bout of legal battle. Before I conclude, It is also important to state in addition to all that I have already said that to my mind, the argument of the Appellant in paragraph 5.19 of the Appellant's Brief of Argument does not hold water because the substantive suit being one involving a banker/customer relationship between the 1st and 3rd Respondents which culminated into the enforcement of the judgment by the institution of the garnishee proceedings at the Court that gave the substantive judgment does not preclude the 1st Respondent from getting the judgment sum owed by the 3rd Respondent even though same is under the control of the Appellant, and I so hold. **It is therefore my unshaken view, having all the above findings in mind, that the trial Court had the jurisdiction to entertain the garnishee proceedings against the Appellant viz-a-viz the provisions of Section 251(1)(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Sections 7(1) (a)(b) and 8 of the Federal High Court Act and Order VIII Rules 2, 3 and 9 of the Judgment (Enforcement) Rules." Per MOHAMMED BABA IDRIS, JCA (Pp 14 - 17 Paras F - F)**

82. Applying the extant position of this Court to this Appeal, we submit that original/substantive suit, the judgment sought to be enforced is a fundamental right suit which both the Federal High Court and the State High Court shear concurrent jurisdiction to entertain, the lower Court was well within its jurisdiction to entertain the Garnishee Proceedings and grant the Orders Nisi and Absolute. We urge your Lordships to sustain this Court's latest position on this subject and resolve this issue in favour of the 1st Respondent and against the Appellants.

CONCLUSION

83. On the whole, we urge your Lordships to sustain the 1st Respondent's Preliminary Objection and Strike out the Appeal on the grounds argued above and also resolve all the issues formulated for determination in favour of the 1st Respondent and against the Appellant, thereby dismissing this Appeal with substantial costs given that the value of the judgment sum has substantially depreciated from the date of judgment in the substantive suit till determination of the Appeal.

Dated this 26th day of April, 2022

.....

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