

# MOMENTOUS DECISIONS OF COURTS IN 2025

Executive Consent under Section 84 of the Sheriffs and Civil Process Act as Affirmed in *Central Bank of Nigeria v. Inalegwu Frankline Ochife & 3 Ors. (2025) LPELR-80220(SC)*: A Constitutional Conflict with Sections 1, 3, 6, and 287 of the 1999 Constitution (as amended).



## **Facts and Background**

The Federal High Court awarded N50,000,000.00 (fifty million Naira) damages in favour of the 1<sup>st</sup> respondent against the 2<sup>nd</sup> to 4<sup>th</sup> respondent (The Inspector General of Police (IGP); The Commissioner of Police, FCT; and The Officer in Charge, Intelligence Response Team, Special Anti-robbery Squad of the Nigeria Police Force). The 1<sup>st</sup> respondent commenced garnishee proceedings against the appellant by a motion ex parte at the trial court. On 10<sup>th</sup> December 2018, the trial court granted a garnishee order nisi which directed the appellant to show cause why it should not pay the judgement sum awarded against the 2<sup>nd</sup> to 4<sup>th</sup> respondent. Upon service on the appellant, it filed an affidavit to show cause, denying liability, and stating that it did not maintain account(s) in the names of the 2<sup>nd</sup> to 4<sup>th</sup> respondent and therefore, was unable to comply with the garnishee order nisi to attach and pay the judgement sum. The 1<sup>st</sup> respondent, on his part, did not file any counter-affidavit to controvert the deposition of the appellant.

In its ruling, the trial court did not decide on whether or not it was necessary for the 1<sup>st</sup> respondent to seek and obtain the consent of the Attorney-General of the Federation before commencing the garnishee proceedings. The trial court, however, held that the appellant's affidavit was incompetent because it was filed out of time and was not regularised. The court thereby, disregarded the affidavit, rendering the averments in the 1<sup>st</sup> respondent's affidavit in support of the application for garnishee uncontested. The court then proceeded to make the garnishee order absolute against the appellant.

The appellant lodged an appeal to the Court of Appeal, where the appellate court held that the trial court erred in its finding that the appellant's affidavit to show cause was filed out of time because there is no law specifying the time within which the appellant must show cause in garnishee proceedings. The Court of Appeal, however, invoked the provisions of s. 15 of the Court of Appeal Act to consider the cause shown by the appellant and held that it was not satisfactory. Their Lordships relied on s. 124 of the Evidence Act, 2011, to take judicial notice of the fact that the accounts of Ministries, Departments and Agencies (MDAs) of the Federal government of Nigeria were warehoused with the appellant under the Federal Government Treasury Single Account Policy, and held that the 2<sup>nd</sup> to 4<sup>th</sup> respondent are MDAs who had accounts with the appellant. Regarding the issue of failure to obtain the consent of the Attorney-General of the Federation, the Court of Appeal held that the judgement debtor was not disputing the judgement debt, the appellant being a garnishee had no business contesting the jurisdiction of the trial court. The appeal was thereby, dismissed; hence the appeal to the Supreme Court.



## Issues for Determination

*The issues before the Supreme Court were:*

- i. Whether the Court of Appeal was right to hold that a garnishee cannot raise absence of jurisdiction where the judgement debtor is not contesting the judgement sought to be enforced.*
- ii. Whether the Court of Appeal ought to have invalidated the garnishee order absolute pronounced by the trial court without consent of the Attorney-General of the Federation, which is a condition precedent for exercising jurisdiction over the garnishee proceedings.*
- iii. Whether the Court of Appeal was right in invoking its powers under s. 15 of the Court of Appeal Act and Order 20 rule 11 of the Court of Appeal Rules, 2016 to determine the garnishee matter.*
- iv. Whether the Court of Appeal was right or justified in relying on s. 124 of the Evidence Act, 2011 to reject the appellant's denial of having accounts in the 2<sup>nd</sup> to 4<sup>th</sup> respondents' (judgement debtors) names and to hold that the 2<sup>nd</sup> to 4<sup>th</sup> respondent are Ministries, Departments and Agencies (MDAs) of the Federal Government of Nigeria whose accounts are with the appellant under the Federal Government Treasury Single Account Policy.*

## Arguments of Counsel

The appellant submitted on the first and second issues that failure to obtain the fiat or consent of the AGF before commencement of the garnishee proceedings as provided in **s. 84 of the Sheriffs and Civil Process Act** robbed the trial court of jurisdiction to entertain the garnishee proceedings and that it is an issue that can be raised at any time. On the third issue, counsel argued that the power of the Court of Appeal to invoke the provisions of **s. 15 of the Court of Appeal Act and Order 20 rule 11 of the Court of Appeal Rules, 2016** to exercise the jurisdiction that a High Court would normally possess to determine a matter was not at large and was dependent on the High Court having had jurisdiction to adjudicate on the matter in the first place. Counsel stated that since, as argued under the first and second issues for determination, the High Court lacked jurisdiction to hear the garnishee proceedings by reason of the failure to obtain the fiat of the Attorney General of the Federation, then the Court of Appeal was wrong in exercising the power in the present instance.

Responding to the submissions of the Appellant, the 1<sup>st</sup> Respondent contended strongly that the deposition of the appellant in its affidavit to show cause that it does not maintain any account in the names of the judgement debtors is a bare evasive denial and did not controvert the assertions in his affidavit in support of the garnishee proceedings, referring to **Order 13 rules 9, 13 and 14 of the Federal High Court (Civil Procedure Rules) 2019**. He posited that it is common knowledge that by the operation of the Treasury Single Accounts (TSA) system, all accounts belonging to agencies of the Federal Government of Nigeria, inclusive of the judgement debtors, are domiciled and managed exclusively by the appellant, and no longer by commercial banks. And that the lower court was correct in invoking the provision of **s. 124 of the Evidence Act** to take judicial notice of this fact and to use same to debunk the deposition of the appellant in its affidavit to show cause.

## **Decision and Reasoning of the Court**

In resolving issues one and two formulated by the appellant which bordered on jurisdiction of the trial court to hear the matter in the first place, the Supreme Court distinguished between the two major subsets of jurisdiction - procedural and substantive. The court re-iterated a fundamental principle of law that an irregularity in the exercise of jurisdiction must not be confused with total lack of jurisdiction which takes cognizance of the general meaning of the word "jurisdiction" as the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. Procedure for invoking the jurisdiction of court is different from the power of the court to decide matters which on the face of the proceedings have been presented in the formal way for its decision and which are within its jurisdiction.

Following this classification, the Supreme Court held that failure of a party to comply with a condition precedent before embarking on a court action is a matter of procedural jurisdiction, and not one of substantive jurisdiction. And where a party commences an action in respect of which a court possesses the substantive jurisdiction to determine and which on the face of it is not incompetent, he is deemed to have properly invoked the jurisdiction of the court. A matter of procedural jurisdiction which impugns this presumed competence of the action should be raised by the opponent at the earliest opportunity before taking any further step in the matter, failure of which he will be deemed to have waived the irregularity and be foreclosed from raising it again. In the present case, the appellant did not raise that issue of the failure of the first respondent to obtain the fiat and/or consent of the AGF before commencing the garnishee proceedings either in its affidavit to show cause or in any other process in the trial court. The appellant's affidavit to show cause met the case of the 1<sup>st</sup> respondent on the garnishee proceedings on the merits. The appellant had no right to raise the issue on appeal before the lower court for the first time. The court, accordingly, discountenanced the first and second issues before it.

The contention of the counsel to the appellant on the third issue for determination was predicated on the success of the first and second issues for determination. The arguments made under this became futile in the face of the court striking out the first and second issues for determination together with the arguments canvassed under them. The third issue for determination was of thus of no value in this appeal and the court felt it had no business determining an issue that is of no value. The third issue for determination and the arguments canvassed thereon by the parties were also struck out.

Regarding the fourth issue, which formed the fulcrum of the decision of the apex court, the decision of the Court of Appeal rested primarily on the reasoning that the 2<sup>nd</sup> to 4<sup>th</sup> respondents are MDAs (Ministries, Departments and Agencies) of the Federal Government and therefore had accounts with the appellant in line with the Treasury Single Account (TSA) policy of the Federal Government of Nigeria. The 2<sup>nd</sup> to 4<sup>th</sup> respondents are evidently not Federal Government MDAs, but individuals employed by MDAs. The 1<sup>st</sup> respondent's problem originated from his failure to make the Nigeria Police Force or the Police Service Commission parties to the suit.

The lower court had taken judicial notice of the fact that under the Federal Government Single Treasury Account (TSA) policy, all the Government Ministries, MDAs accounts are now with the appellant and that the appellant cannot be allowed to simply deny that it is not maintaining any account for the Judgement Debtors who are MDAs. Thus, in spite of the deposition in the appellant's affidavit to show cause that it maintained no account in the names of the 2<sup>nd</sup> to 4<sup>th</sup> respondent, the lower court proceeded to make the garnishee order nisi, absolute on the faulty premise that the 2<sup>nd</sup> to 4<sup>th</sup> respondent were MDAs of the Federal Government. The Supreme Court held that the findings and conclusion of the lower court that the judgement debtors are MDAs, and that as such, the appellant maintained accounts in their names under Treasury Single Accounts Policy of the Federal Government of Nigeria run counter to the evidence placed before it. The Supreme Court adjudged the decision of the lower court as being perverse, and which it was obligated to set aside.

The appeal was consequently allowed. The judgement of the Court of Appeal sitting in its Abuja Division and delivered in **Appeal No. CA/A/111/2019** on the day 4<sup>th</sup> of December, 2020 was set aside, the garnishee proceedings commenced by the first respondent was dismissed and the appellant was discharged.

### **Opinion of Honourable Justice H.M. Ogunwumiju, JSC**

A few eyebrows were raised when Ogunwumiju, JSC allowed the appeal in part but departed from certain views on points of law. His Lordship had considered issues one and two together and came to the conclusion that *s. 84 of the Sheriff and Civil Process Act is in conflict with ss. 1, 3, 6 and 287 of the 1999 Constitution and struck down the provisions*. The learned justice was of the firm view that the trial court had requisite jurisdiction to entertain the garnishee proceedings without prior consent of the AGF. These issues were thus resolved in favour of the 1<sup>st</sup> respondent.

On issue three, His Lordship agreed with the court below that it is not the duty of the garnishee to fight a proxy war on behalf of the judgement debtor - **See *GTB v. Innoson Nig. Ltd.***<sup>1</sup> And that what is important was the resolve by the Court of Appeal to deploy ***s. 15 of the Court of Appeal Act and Order 20 rule 11 of the Court of Appeal Rules 2016*** to ensure that where it will not occasion miscarriage of justice to any party, and in suitable circumstances, the Court of Appeal acts quickly to decide the merit of the case between the party. That is what enthrones justice. This issue was resolved in favour of the 1<sup>st</sup> respondent.

On issue four, however, His Lordship opined that the Nigeria Police does not generate funds as it is not a profit oriented public agency but one which renders a social service in the protection of the public and the administration of justice. The appellant stated averred that it did not hold accounts in the names of the 2<sup>nd</sup> to 4<sup>th</sup> respondent. That assertion was never contradicted by the 1<sup>st</sup> respondent. Suffice it to say that the balance of probability on the affidavit evidence was that the 2<sup>nd</sup> to 4<sup>th</sup> respondent did not maintain a TSA Account with the CBN from which the judgement debt could have been recovered. Thus, the Order Absolute would have been in vain as one impossible to execute. Judges do not make orders in vain; thus, the order that the 2<sup>nd</sup> to 4<sup>th</sup> respondent are MDAs and that the Appellant maintained accounts in their names in the Treasury Single Accounts Policy of the Federal Government of Nigeria was a decision founded on the wrong factual and legal premises devoid of the evidence to back it up and had to be set aside.

The appeal was thereby allowed in part.

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<sup>1</sup> (2017) LPELR-42368 (SC); (2017) 16 NWLR (Pt. 1591) 181

## **Legal Commentaries and Conclusion**

The decision of the Supreme Court in this case is technically sound and procedurally grounded, offering clearer rules on garnishee proceedings against government entities. However, it leans toward procedural formality at the expense of wider access to justice, particularly for enforcement against the state wrongdoing – a concern captured in the opinion of Ogunwumiju, JSC.

The judgement reinforces that garnishee orders are serious and must be backed by concrete proof of funds – avoiding speculative attachments. The judgement also protects institutional boundaries by affirming that individuals are not MDAs with TSA accounts; the judgement prevents the improper use of public funds to satisfy private claims without clear legal basis. The judgement also properly applied the provision of s. 84 of the Sheriff and Civil Process Act, as an issue of procedural jurisdiction (even though the issue of constitutionality remains contentious). This reinforces predictability and certainty in civil process rules.

While the decision remains grounded in law, the concern is that the apex court missed a big opportunity to pronounce on an aspect of law which would have occasioned a broader public policy reform. The Supreme Court could have seized the opportunity to extol the sacrosanct constitutional provision enshrined in s. 287 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to the effect that all judgement of courts in Nigeria shall be enforced in any part of the federation, and by all authorities. There is no proviso to this provision, and it does not admit of any exception in any statute. Thus, while the categorization of s. 84 of the Sheriffs and Civil Process Act as a procedural requirement in the majority decision of the apex court is sound in law, a more laudable action would have been to put the issue of the constitutionality of the provision to rest. A golden opportunity for the Supreme Court to affirm that all judgement of court must be enforced without executive gatekeeping, was missed.



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