

Garnishee Proceedings Against Public Funds

*The Narrowing Scope of Section 84 of the
Sheriffs and Civil Process Act in CBN v
Lidan Engineering Ltd & Ors*



Introduction

Garnishee proceedings constitute one of the most effective mechanisms for enforcing monetary judgments in Nigeria, it is a post judgment proceeding in nature.² For decades, it has stood as one of the most potent tools in the enforcement arsenal of Nigerian judgment creditors. In theory, once a court has spoken, enforcement should be a matter of course. In practice, however, the story has often been different, especially where government funds are involved.

At the centre of this tension lies Section 84 of the Sheriffs and Civil Process Act 2004, a provision that requires the consent of the Attorney-General before funds in the custody of a public officer can be attached. What was designed as a safeguard for public finance has, over time, acquired a more controversial reputation: a procedural shield capable of stalling, and sometimes defeating, the enforcement of valid judgments.

The recent decision of the Supreme Court in *CBN v Lidan Engineering Ltd & 6 Ors*³ marks a decisive moment in this long-standing debate. It does not merely interpret Section 84 of the SCPA but recalibrates its practical reach.

“

"In theory, once a court has spoken, enforcement should be a matter of course."

The Facts: A Familiar Story of Judgment Without Satisfaction

The dispute dates to 2004, when the 1st to 4th respondents/judgment creditors imported six 40-foot containers into Nigeria. Following the alleged wrongful auction of three of those containers by the 5th to 7th respondents/ judgment debtors, litigation ensued. The 1st to 4th respondents then instituted an action at the trial Court, and in a considered judgment delivered on April 24, 2012, the trial Court granted their claim and awarded the sum of N320,000,000 (Three Hundred and Twenty Million Naira) as damages against the 5th to 7th respondents.

Faced with non-compliance, the judgment creditors turned to garnishee proceedings, targeting funds held by the Central Bank of Nigeria (CBN) under the Treasury Single Account (TSA). The trial Court granted a garnishee order absolute in the sum of N509,000,000 (Five Hundred and Nine Million Naira) against the appellant. The Court of Appeal affirmed the decision of the trial Court. Dissatisfied, CBN (the appellant) consequently lodged an appeal at the Supreme Court.

In dismissing the appeal, the Supreme Court, relying on Sections 2(e) and 36 of the CBN Act, held that the CBN, in relation to government funds, operates within a banker-customer relationship, and not as a public officer holding funds in an official custodial capacity contemplated by Section 84 SCPA.⁴

The Apex Court further held that, having found that the CBN does not fall within the contemplation of a “public officer” under Section 84(1) of the SCPA, the requirement of the consent of the Attorney-General does not arise. The Court emphasised that the consent requirement is only triggered in garnishee proceedings where the garnishee qualifies as a public officer within the meaning of the provision. In the words of the Court:

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.⁵

2004

Six 40-foot containers imported; litigation ensues over wrongful auction.

24 Apr 2012

Trial Court judgment awards ₦320M in damages.

Garnishee Proceedings

Creditors target funds held by CBN under the TSA.

Order Absolute

Court grants order absolute for ₦509M; Court of Appeal affirms.

Supreme Court

Dissatisfied, CBN lodges an appeal at the Supreme Court.

Key Figures in Dispute

₦320M

Initial damages awarded by trial Court in 2012

₦509M

Garnishee order absolute targeting TSA funds

Revisiting Section 84:

Purpose vs Practice

At the heart of the Supreme Court's reasoning in *CBN v Lidan Engineering Ltd & 6 Ors*, lies a decisive conceptual shift: the characterisation of the relationship between the CBN and Federal Government agencies as one of banker/ customer, rather than that of a public officer holding funds in an official capacity within the contemplation of Section 84 of the SCPA.

This characterisation proved determinative. By situating the CBN within the framework of a commercial banking relationship, the Court effectively removed funds held on behalf of government agencies from the protective ambit of Section 84. In doing so, it held that such funds are not "*in the custody of a public officer*" in the sense contemplated by the statute, and, consequently, the requirement for the consent of the Attorney-General does not arise in attaching such funds through garnishee proceedings.⁶

The position of the Supreme Court is not without precedent. The Court's reasoning aligns with its earlier decisions in *CBN v Interstella Communications Ltd & Ors*⁷ and resonates strongly with the dissenting stance of Ogunwumiju JSC in *CBN v Ochife & Ors*.⁸ In particular, Ogbuinya, JSC drew heavily from the reasoning of Ogunbiyi, JSC in *Interstella* where reliance was placed on Sections 2(e) and 36 of the CBN Act. These provisions affirm the CBN's role as the Federal Government's banker, empowered to receive, manage, and disburse government funds.

On the strength of these statutory provisions, the Court concluded that the CBN does not function as a public officer in the context of garnishee proceedings. The implication is straightforward but profound: where the garnishee is not a public officer, the statutory requirement for Attorney-General consent is inapplicable.

"Judgment creditors should not be deprived of their monies in the name of requiring consent from the Attorney-General, as government agencies may exploit such procedural requirements to evade the satisfaction of lawful judgment debts."

Revisiting Section 84:

Purpose vs Practice

Notwithstanding the doctrinal clarity of this interpretation, the decision of the apex Court invites deeper reflection on the broader purpose and continuing relevance of Section 84 of the SCPA. The Court itself acknowledged that the provision was designed to prevent embarrassment to the government by ensuring that public funds are not diverted without their knowledge.⁹

In practice, however, this balance has often tilted unfavourably against judgment creditors. The consent requirement has frequently been criticised as a procedural bottleneck, one that is susceptible to delay and, in some instances, to strategic abuse. It is against this backdrop that the Supreme Court's restrictive interpretation of Section 84 in the present case becomes more intelligible. The Court was not merely interpreting a statutory provision; it was responding to a pattern of practical injustice. In emphasising that judgment creditors should not be deprived of the fruits of their judgments under the guise of procedural compliance, the Court signalled a clear intention to curb the misuse of the consent requirement as a shield against liability when it held thus:

Judgment creditors should not be deprived of their monies in the name of requiring consent from the Attorney-General, as government agencies may exploit such procedural requirements to evade the satisfaction of lawful judgment debts.¹⁰

The immediate effect of this decision is a significant narrowing of the scope within which Attorney-General consent is required in garnishee proceedings. By excluding the CBN from the definition of a "public officer" in this context, the Court has materially expanded the enforceability of monetary judgments against government-related entities.

Purpose (Intended)



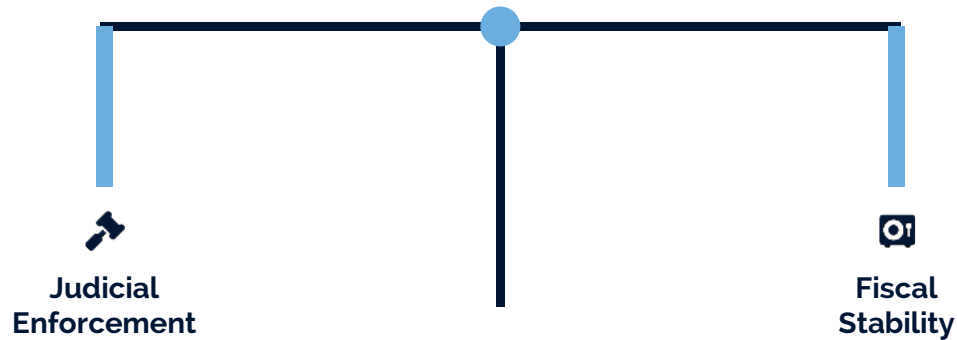
Designed to prevent embarrassment to the government by ensuring public funds are not diverted without their knowledge.

Practice (Reality)



A procedural bottleneck susceptible to delay and strategic abuse to evade the satisfaction of lawful judgment debts.

Does facilitating enforcement against TSA-held funds undermine the very fiscal discipline the TSA seeks to achieve?



The apex Court's decision is not without its complexities. A critical, and perhaps underexplored, dimension of the decision lies in its implications for the Treasury Single Account (TSA) framework. If funds held within the TSA, managed through the CBN, are now susceptible to attachment without prior governmental consent, a new tension emerges between judicial enforcement and public financial management.

While the decision undoubtedly strengthens the hands of judgment creditors, it simultaneously exposes government funds to a heightened risk of execution. This raises legitimate concerns about fiscal stability and the broader integrity of centralised financial systems.

Conclusion: The Beginning of the End?

The Supreme Court's decision in this instant case marks a defining moment in the evolution of garnishee proceedings in Nigeria. More than a mere clarification of the law, it represents a decisive shift toward strengthening the efficacy of judgment enforcement, particularly against government-related entities.

For Judgment Creditors

The implications are both immediate and profound. The ruling dismantles long-standing procedural barriers, reducing the delays, uncertainties, and frustrations that have historically accompanied attempts to enforce monetary judgments against government institutions. In practical terms, it restores confidence in the judicial process by ensuring that successful litigants are not left with hollow victories.

For Government Agencies

The decision serves as a cautionary signal. It underscores the growing reality that procedural protections can no longer be relied upon as a shield against enforcement. Greater diligence and strategic risk management must now define their approach to contractual and commercial engagements.

Yet, beyond its immediate impact, the decision raises a more fundamental question: does this mark the gradual erosion of Section 84 of the SCPA as a meaningful barrier in garnishee proceedings? While the provision remains intact, its scope has undeniably been narrowed, and its once formidable grip significantly weakened.

*"Ultimately, this decision tilts the balance in favour of **justice over technicality**. It affirms a simple but powerful principle which is that a judgment of a court must mean something. And in doing so, it ensures that successful litigants are no longer unjustly denied the fruits of their hard-earned judgments against government institutions and funds held with the Central Bank of Nigeria."*

Endnotes

12

1. SC/CV/82/2021
2. Balogun v. W.A.M Ltd (2015) ALL FWLR (pt. 805) 65 at 74 (para. F)
3. Ibid
4. Ibid p. 19
5. Ibid p. 19
6. Sheriffs and Civil Process Act, s 84
7. (2018) 7 NWLR (Pt. 1618) 294
8. Central Bank of Nigeria v Ochife & Ors SC/CV/268/2021
9. Ibid ; p 16, Paras H-D
10. Ibid; p 16; Paras H-C

Contributors

12



Daze Nga

Partner, Dispute Resolution
& ADR



Shallom Ikenga

Senior Associate, Dispute
Resolution & ADR



Bruno Ibegbunam

Associate, Dispute Resolution
& ADR



CONTACT US

LAGOS

KENNA Place
8, Ogunyemi Road, Palace Way, Oniru
PO Box 73002, Victoria Island, Lagos

ABUJA

1st Floor, Novare Central
Plot 502 Dalaba Street,
Wuse Zone 5, FCT 900285, Abuja

ENUGU

Michael Place
3, Emmanuel Ngwu Street,
Thinker Corner,
400211 Enugu State.

+234 811 395 1052, +234 811 395 1053
counsel@kennalp.com