



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

ON FRIDAY, THE 27TH DAY OF JANUARY, 2023

BEFORE THEIR LORDSHIPS:

<u>RAPHAEL CHIKWE AGBO</u>	-	<u>JUSTICE, COURT OF APPEAL</u>
<u>OYEBISI FOLAYEMI OMOLEYE</u>	-	<u>JUSTICE, COURT OF APPEAL</u>
<u>BALKISU BELLO ALIYU</u>	-	<u>JUSTICE, COURT OF APPEAL</u>

CA/C/121/2021

BETWEEN:

CENTRAL BANK OF NIGERIA (C.B.N.) --- APPELLANT

AND

1. EVANG. NDONGESIT BASSEY OKON 2. MINISTRY OF POLICE AFFAIRS 3. INSPECTOR GENERAL OF POLICE 4. COMMISSIONER OF POLICE, AKWA IBOM STATE	}	RESPONDENTS
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JUDGMENT

(DELIVERED BY BALKISU BELLO ALIYU, JCA)

This is an appeal against the ruling of the Federal High Court sitting at Uyo, Akwa Ibom State (trial Court) delivered on the 5th March, 2021 by Hon. Justice F. O. Riman, in which he made order nisi dated 28th January, 2021 absolute against the Appellant. He ordered the Appellant to pay to the 1st Respondent the sum of N102,500,000.00 (One Hundred and two million, Five Hundred Thousand Naira) in its custody. The Court also awarded sum of N7million as costs to the 1st Respondent.

The facts of the case as stated by the 1st Respondent are that he filed a fundamental rights enforcement suit against the 2nd to 4th Respondents at the High Court of Akwa Ibom State sitting at Okobo and was successful. He was awarded judgment in the sum of ₦102,500,000.00 against the 2nd to 4th Respondents. As a result of the failure of the 2nd to 4th Respondents all police authorities to satisfy the judgment debt, the 1st Respondent registered the judgment at the trial Court and commenced garnishee proceedings against the funds of the 2nd to 4th Respondents in the custody of the Appellant as the garnishee.

On the 28th January, 2021, the trial Court made a garnishee order nisi and same was served on the Appellant along with the 1st Respondent's affidavit and written address, for it to show cause why the order should not be made absolute. Upon receiving the order nisi and the other processes filed by the Respondent, the Appellant filed a notice of preliminary objection predicated on Section 84 of the Sheriffs and Civil Process Act (SCPA), in which it asserted that being a public officer within the meaning of the said Section, the 2nd to 4th Respondents' money with the Appellant cannot be proceeded against through a garnishee proceedings without the prior notice and consent of the Attorney General of the Federation, given and obtained. As such the trial Court had no jurisdiction to issue the order nisi. On the 22nd February, 2021, the trial Court delivered its ruling and dismissed the Appellant's preliminary objection. Then on the 5th March, 2021, it made the order nisi absolute and ordered the Appellant to pay the judgment debt with cost.

Aggrieved with the decision of the trial Court making the order nisi absolute, the Appellant filed notice of appeal on the same date of the decision, i.e. on the 5th March, 2021 relying on one ground of appeal to pray this Court to allow the appeal and to set aside the ruling of the trial Court.

The Appellant's brief of argument was settled by SEGUN JIMOH ESQ. and filed on the 15th June, 2021 but deemed properly filed and served on the 7th February, 2022. He proposed a sole issue for the determination of the appeal as:

Whether the Honourable trial Court was vested with the requisite jurisdiction to entertain the Garnishee proceedings and subsequently made the Order Absolute.

The 1st Respondent brief of argument was settled by E. E. OSIM ESQ. and filed on the 15th November, 2021 but deemed properly filed and served on the 7th February, 2022. In paragraph 3.0, page 2 of the brief, he gave notice of preliminary objection which he went on to argue from pages 2 to 5 of the brief. In page 5, he proposed a lone issue for the determination of the main appeal in the event that his preliminary objection fails:

Assuming without conceding that there is a valid Notice of Appeal, whether there is jurisdiction in the trial court to proceed to make the order nisi absolute?

The 2nd to 4th Respondents did not file brief in answer to the appeal. The Appellant responded to the preliminary objection in the Appellant's reply brief filed on the 7th February, 2022.

1ST RESPONDENT'S PRELIMINARY OBJECTION

The 1st Respondent's learned counsel submitted that his preliminary objection is predicated on the fact that the Appellant who conceded to the ruling of the trial Court of 22nd February, 2021, cannot use the instrumentality of the decision of 5th March, 2021 to appeal against that decision. He argued that there is no valid notice of appeal against the decision of the trial Court making garnishee order nisi, absolute **without more**. That the ground of this appeal does not arise from the *ratio decidendi* of the order absolute made on the 5th March, 2021 and therefore there is no valid appeal against the reason for the order nisi to be made absolute, which was **because of Appellant's failure to file an affidavit to show cause**. He submitted that the Appellant's sole ground of appeal and especially the particulars thereof do not relate to or arise from the decision of the trial Court of 5th March, 2021 because **there was no decision against the Appellant on that date** as shown on the record. This is because there is no appeal against the ruling and findings of the trial Court to the effect that the Appellant is not a public officer within the meaning of Section 84 of the SCPA and therefore the said decision made on the 22nd February 2021 is binding on the parties herein and the Appellant is deemed to have conceded to that decision. Further submitted, insisting that since the Appellant did not appeal against that decision and order of the lower court made on the 22nd February, 2021, he cannot use the decision of the 5th March, 2021 as a the fulcrum to invite this Court to upset the binding order of 22nd February, 2021 which it failed, refused or neglected to appeal against. That, this court cannot offer assistance to the Appellant in this appeal, which stands and falls with the notice

of appeal. He relied on the case of OBMUGADU VS. CPC & 2 ORS. (2013) 3 NWLR (PT. 1340) 31 at 50 where this court held that an appellant who appealed a final decision of the lower court can incorporate appeal against an interlocutory ruling *"only where the interlocutory ruling has been made an issue that formed part of the case leading to the final decision and mentioned or made a ground of appeal."*

He argued that the interlocutory ruling of the trial Court of 22/2/21 was given two weeks before the decision of 5th March, 2021 and that the Appellant did not indicate anywhere in his Notice of Appeal that it is also appealing against that February, 22 ruling. He further submitted that the Appellant's notice of appeal before this court is bereft of any ground of appeal predicated on the decision of the lower court of 5th March, 2021. He referred to the ruling of the trial Court of that date vis-à-vis the lone issue (ground?) raised which negates or departs from and it is outside the decision of the trial Court of 5th March, 2021. He finally submitted, insisting that the sole issue that the Appellant submitted for the determination of this appeal is not predicated on the decision of the trial Court of 5th March, 2021 and therefore the Appellant is deemed to have abandoned its lone ground of appeal. He placed further reliance on a host of cases including UNIVERSITY OF ILORING VS. AKINYANJU (2008) ALL FWLR (PT. 406) 1989 at 2004, UNIVERSITY OF ILORING VS. OLUWADARE (2009) ALL FWLR (PT. 452) 117 at 1205, ADAMU VS. THE STATE (2017) 10 NWLR (PT. 1575) 463 at 480, EMEKA VS. OKOROAFOR (2017) 11 NWLR (PT. 1577) 410 AT 494 to support his argument.

Responding to the submissions of the 1st Respondent supra, the Appellant's learned counsel submitted that the 1st Respondent in arguing his preliminary objection failed to appreciate that the sole ground of this appeal is based on the final decision of the trial Court of 5th March, 2021 wherein it made the garnishee order nisi absolute, and also it challenges the jurisdiction of the trial Court to make that final order. He conceded that an appeal must rise or relate to the judgment appealed against, but argued that this appeal is indeed against the final decision of the trial Court of that date. That the essence of ground of appeal is to give notice to the Respondent of the nature of the complaint of the Appellant and in this case, the Respondent was duly notified in the ground of appeal that this appeal is against the final decision of the trial Court. The Appellant's learned counsel submitted that if this court agrees with the Appellant that the trial Court had no jurisdiction to make the garnishee order absolute, it means every action taken by the trial Court would amount to a nullity. That since the fulcrum of the Appeal is jurisdiction, even this Court *suo motu* can raise it or the Appellant can raise it even for the first time at the Supreme Court and if it succeeds, it will put an end to all that the trial Court did.

He argued that all the authorities the 1st Respondent cited are not supportive of his case since the purpose of a ground of appeal is to avoid surprise and to inform the Respondent of the Appellant's complaint in the vexed judgment. That the 1st Respondent cannot sincerely say he is not in the know on what the Appellant is averse to in the judgment appealed against. He relied on the case of **GARUBA VS. KIC LTD (2005) 5 NWLR (PT. 917) 160 at 181** in support. He

also argued that all the cases cited by the 1st Respondent do not support his argument and urged the Court to so hold.

RESOLUTION OF THE PRELIMINARY OBJECTION:

The parties are *ad didem*, that a notice of appeal must contain grounds of appeal against the *ratio decidendi* of the vexed judgment. And as correctly argued by the 1st Respondent, the grounds of appeal must relate to the judgment appealed against to be valid and to activate the jurisdiction of this Court to look into that complaint. The grounds must also be clearly stated so as to enable the opponent and the court to understand what the Appellant's complaint(s) are against the judgment. That is why there must be particulars of the grounds of appeal stated to further elucidate the ground of appeal so as to leave no doubt on the issue in contention against the judgment appealed against. See **UNILORIN VS. AKINYANJU (supra)** and **OLEKSNADR VS. LONSESTAR DRILLING CO. LTD. (2015) 9 NWLR (PT. 1464) 337 at 363 paraq. C-D.**

The complaint of the 1st Respondent in this preliminary objection is that the ground of appeal does not relate to the decision of the trial Court delivered on the 5th March, 2021. The notice of this appeal is contained in pages 265-266 of the printed record of appeal. The Appellant stated on that notice thus:

TAKE NOTICE that the Appellant being dissatisfied with the decision of the Federal High Court, Uyo Judicial Division as contained in the ruling of the Honourable Court delivered by Hon. Justice R. O. Riman, on the 5th of March, 2021 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing seek the reliefs set out in paragraph 4...

From the above excerpts, the Appeal is against the decision of the trial Court of 5th March, 2021 and no other. Now the sole ground of appeal on the Notice of Appeal is also reproduced below:

GROUND ONE

The Honourable trial Judge respectfully erred in law when he made the order nisi absolute against the Appellant.

PARTICULARS OF ERROR

1. By the provisions of Section 84(1) of the Sherriff and Civil Process Act, Cap. S6 Laws of the Federation of Nigeria, 2004, the consent of the Attorney General of the Federation must be obtained where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity.
2. The Appellant is a public officer
3. The consent of the Attorney-General was not obtained by the 1st Respondent (Judgment Creditor) before the commencement of the garnishee proceedings against the Appellant at the lower court.

The contention and argument of the 1st Respondent in this preliminary objection is to the effect that the issue of the consent of the Attorney General of the Federation before commencing garnishee proceedings was the subject of the trial court's ruling of 22/2/2001 on the preliminary objection raised on the same ground by the Appellant and he was overruled. That since he did not appeal against that ruling, he cannot raise this same issue of Section 84 of the SCP Act in the ground of this appeal which was against the decision of 5th March, 2021. In effect that the Appellant cannot appeal against the

interlocutory ruling of the trial Court in respect of the Appellant's preliminary objection under this present ground of appeal.

I have to take into consideration and have in mind that the proceedings leading to the decision appealed against was a garnishee proceeding, which is a form of judgment enforcement. My examination of the decision of the trial Court of 5th March, 2021 contained in pages 247-250 of the record of appeal shows indeed that the trial Court refused and dismissed the application of the Appellant for stay of proceedings and proceeded to make the garnishee order nisi absolute, thereby finally deciding the garnishee proceedings. The question now arises, does the failure of the Appellant to appeal against the ruling dismissing his preliminary objection that was predicated on the provision of Section 84 of the SCP Act precludes him from appealing the said decision along with the final decision of 5th March, 2021 and still on the provisions of same Act as vehemently argued by the 1st Respondent. In the case of **BALFOUR BEATTY CONST. LTD & ORS VS. AKANDE (2019) LPELR-48832 (CA), ABUBAKAR, JCA** (as he then was) held Pgs. 15-16 paras. A thus:

The Appellants actively took part in the trial that resulted in the Judgment of the lower Court, I think the issue of service of process alone cannot constitute valid basis for appeal. The Appellants have the opportunity to incorporate the appeal against ruling along the final decision. In **EZEADUKWA Vs. MADUKA & ANOR [1997] 8 NWLR (Pt. 518) Pg. 635; (1997) LPELR-8062 (CA) Pg. 27-30, Paras. G - A**, this Court held as follows and I quote: "...I do not agree that an aggrieved party must invariably appeal against an interlocutory decision of a trial Court. An appellant can appeal against a ruling of a trial Judge together with the final decision of the Court. As a matter of fact, appellate Courts encourage the procedure and discourage parties appealing

against interlocutory decision which will not dispose of the entire matter. In the latter situation, so much litigation time is wasted and for no valid reason ... A party who fails in a ruling before a trial Judge may decide to take a gamble by waiting for the final decision of the Court, hoping that he succeeds at the end. If he does, then the Ruling against him is spent and he need not do anything about it..." It therefore follows that the Appellants could challenge the decision of the trial Court against the interlocutory Ruling alongside the Final decision which in the instant case had been delivered.

Again, this Court in the case of PATNASONIC INDUSTRIES NIG. LTD VS. KABARA TRADING CO. LTD & ORS. (2021) LPELR-55555 (CA), following the Apex Court's decision in ONWUBUARIRI & ORS. VS. IGBOASOYI & ORS. (2011) LPELR-754 (S.C.) held that an appellant is permitted to appeal against the interlocutory decision in the final appeal without the need to file a separate ground of appeal or even seek extension of time to do so.

Now apart from the above position of the law, it is also trite that an appeal is not decided or determined on grounds of appeal but on the issue(s) distilled or derived from the grounds. The 1st Respondent contended in paragraph 3.04 of his brief that the notice and particulars of this appeal are not predicated on the trial Court's decision of 5th March, 2021 and so also is the sole issue for determination derived from it did not also arise from the 5th March, 2021 decision. That contention is not correct in view of the opening paragraph of the notice of appeal reproduced supra where the Appellant stated that he was appealing the decision of the trial Court of 5th March, 2021. Further, the sole issue for determination has already reproduced supra but at risk of repetition but for clarity, it is

“Whether the Honourable trial Court was vested with the requisite jurisdiction to entertain the Garnishee proceedings and subsequently made the Order Absolute.” Incidentally, the 1st Respondent’s also proposed the same issue of jurisdiction in his own brief of argument as: **“Assuming without conceding that there is a valid Notice of Appeal, whether there is jurisdiction in the trial court to proceed to make the order nisi absolute”.** (underlining added).

I find that the issues raised by both parties from the sole ground of appeal constitute a challenge to the jurisdiction of the trial Court to make the garnishee order nisi absolute on 5th March, 2021. And I confirm that the issue arises from the ground and particulars of this appeal. Besides, it is elementary law that issue of jurisdiction can be raised at anytime and anyhow in the course of proceedings even at the Apex Court for the first time being very fundamental to adjudication. Therefore having this position of law in mind, I am of the view that there is a valid ground of appeal against the decision of the trial Court making garnishee order nisi absolute against the Appellant on the 5th March, 2021. I am not convinced otherwise by the erudite argument of the learned 1st Respondent’s counsel. This preliminary objection has no merit and it is hereby dismissed. I will proceed to determine the appeal on its merit on the Appellant’s sole issue.

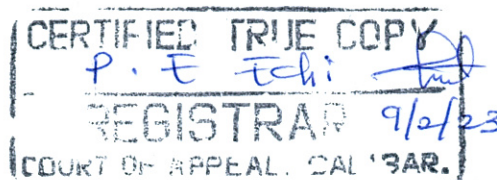
SUBMISSIONS OF PARTIES:

In arguing the Appellant’s lone issue whether the trial Court was vested with the requisite jurisdiction to entertain the Garnishee proceedings and subsequently make the order nisi, learned Counsel

submitted relied on the cases of MADUKOLU VS. NKEMDILIM (1962) ALL NRL (PT. 2) 590 and INEC VS. OGBADIBO L.G. (2016) 17 NWLR (PT. 1498) 167 at 196, to submit that jurisdiction is the bedrock of the any judicial proceedings and its absence of defect renders any proceedings a nullity. He further quoted and relied on the provisions of Section 84 of the Sheriffs and Civil Process Act to submit that the record of appeal shows that there was no consent of the Attorney General of the Federation sought and obtained by the 1st Respondent before commencing the garnishee proceedings against the Appellant. He submitted that the Appellant is a public officer within the meaning of the said Section 84 of the Sheriffs Act and was held in several cases including IBRAHIM VS. JSC KADUNA STATE (1998) 14 NWLR (PT. 584) 1 at 38 parag. D. and C.B.N. VS. HYDRO AIR PTY (2014) 16 NWLR (PT. 1434) 482, CBN VS. SAJO appeal NO: CA/YL/149/2019 delivered on 17th July, 2020 and others.

Further submitted that the trial Court made the order nisi on the application of the 1st Respondent absolute without jurisdiction being contrary to the statutory law and decided case law. That the effect of the failure of the 1st Respondent to obtain the consent of the Attorney General of the Federation before commencing the garnishee proceedings means that the trial Court was not clothed with the jurisdiction of make the garnishee order absolute against the Appellant. He urged the court to so hold and allow this appeal.

On his part, the 1st Respondent's learned counsel maintained that the Appellant and the 1st Respondent are bound by the decision of the lower court made on the 22/2/2021 to which there is no appeal as was



held in the case of UWAZURIKE VS. NWACHUKWU (2013) 3 NWLR (PT. 1342) 503 among other cases cited and relied upon. He cited the holding of the trial Court in its decision of 22/2/2021 that the relationship between the Appellant and the 1st and 2nd Respondents is that of a banker/customer as such the Appellant is not a public officer in the context of the provisions of Section 84 of the Sherriff & Civil Process Act. It was further argued, correctly, that this Court is bound by the Apex Court's decision in CBN VS. INTERSTELLAR COMMUNICATION LTD (2017) 12 SC (PT. IV) 97 at 178-180 and has the duty to follow it without more. He filed additional authority of decisions of this Court in CBN VS. KIMI APPAH ESQ. (2020) LCN/14036 (CA) and LODIGIAN (NIG.) LTD VS. A. G. ZAMFARA STATE & ORS. (2021) LPELR-55645 (CA). He urged this Court to dismiss this appeal.

By way of reply on points of law, the Appellant submitted that the Appellant's appeal in this matter is not against the ruling of the court below of 22nd February, 2021 but the final decision of the court of 5th March, 2021, and that the 1st Respondent has not cross appealed any of the decision of the Court below. He also submitted that the argument of the 1st Respondent regarding the ruling of the trial Court of 22nd February, 2021 therefore comes to naught and is of no moment. We humbly urge the Honourable Court to discountenance same.

On the point by the 1st Respondent that this Honourable Court is bound by the decision of the Supreme Court, we are at one but he appears not to appreciate the Appellant's position advanced in the

Appellant's Brief, that this Honourable Court followed right, the decision of the Supreme Court in **CBN VS. INTERESTELLAR CASE (SUPRA)** when it interpreted and followed that decision, to hold that Central Bank of Nigeria is a Public Officer. One would expect that the 1st Respondent if he disagreed with the Appellant's position would cite an authority where this Honourable Court interpreted the Supreme Court decision to the contrary. In conclusion, the Appellant urges the Court to discountenance the 1st Respondent's argument and hold that the Appellant is a Public Officer, thus there being no consent of the Attorney General before the commencement of the Garnishee Proceedings, the Court below Garnishee Order Absolute, of 5th March, 2021, was without jurisdiction and therefore null and void. He filed additional authorities of the unreported judgments of this Court in **APPEAL NO: CA/K/105/2020-CENTRAL BANK OF NIGERIA VS. ABIODUN ARIGHABUWO OSONOKI** delivered by the Kaduna division of this Court on 3rd March, 2022 and **APPEAL NO: CA/C/178/2020: CENTRAL BANK OF NIGERIA VS. ENGINEER CLIFF EZEObIKA & 8 ORS.** delivered by this division on the 5th May 2022 but did not attach copies of the judgments.

RESOLUTION:

*Whether the Honourable trial Court was vested with the requisite jurisdiction to entertain the Garnishee proceedings and subsequently made the Order Absolute. It is the law that jurisdiction to conduct proceedings is fundamental and where it is absent, the proceedings will be a nullity. See **MADUKOLU VS. NKEMDILIM (supra)**. The proceedings leading to the judgment of 5th March 2021 are garnishee proceedings in which the 1st Respondent sought to enforce the*

judgment he obtained against the 2nd to 4th Respondents by attaching the funds belonging to them that is in the custody of the Appellant. The challenge to the jurisdictional competence of the trial Court to conduct the said proceedings and make the garnishee order absolute is predicated on Section 84(1) and (3)(a) of the Sheriff and Civil Process Act which provides that:

1. *Where money liable to be attached by Garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in custodial egis, the Order Nisi shall not be made under the provisions of the last proceeding section unless the consent to such attachment is first obtained from the appropriate officer in the case of money in the custody or control of a public officer or of the court in the case of money in custodial egis as the case may be.*
2. -----
3. *In this Section "appropriate officer" means*
 - a. *In relation to money which is in the custody of a public officer who holds a public office in the public service of the federation, the Attorney General of the Federation.*

The above section has been interpreted severally by this Court with regards to the Appellant (CBN) as to whether it is a public officer within the contemplation of the said section and whether moneys of federal government or any of its agencies in custody of the Bank can be attached in a garnishee proceedings without the prior notice to and consent of the Attorney General of the Federation (AGF) given and obtained. The Appellant has relied on the Apex Court's decision in **IBRAHIM VS. JSC KADUNAL STATE (supra)** where the Apex Court held that the term "public officer" includes "public department" and "public body". In the case of **CBN VS. HYDRO AIR PROPERTY (supra)** also cited by the Appellant, this court reasoned and I agree

with that reasoning that funds in the custody of the Appellant (CBN) are in fact in the custody and control of the its officers who are public officers within the meaning of Section 318(1) of the 1999 Constitution of Nigeria as amended and Section 18(1) of the Interpretation Act. The Court again followed the same reasoning in the case of **CBN VS. EKPO & ANOR. (2021) LPELR-54147 (CA)**, when it held per SHUAIBU, JCA at pages 17-18 paragraph B of the judgment that:

As to whether the Sheriffs and Civil Process Act applies to the present case, I have already held the view that Central Bank of Nigeria falls squarely within the status of a public officer, and this Court in C.B.N V HYDRO AIR PTY LTD (supra) 521 per IYIZOBA, JCA reason as follows:- "Section 318 of the 1999 Constitution on which the cross-appellant has placed reliance to contend that reference to public officer in Section 84 of the Sheriffs and Civil Process Act cannot include the cross-respondent defines "public servant of the Federation" to include staff of any statutory corporation established by an Act of the National Assembly. There is in fact no doubt that this definition includes officials of the Central Bank of Nigeria. When this provision is examined critically vis-a-vis the provision of Section 84 of the Sheriffs and Civil Process Act, it will be seen that fund in the coffers of the Central Bank of Nigeria are actually funds in the custody or under the control of a public officer in his official capacity. This is because the Central Bank of Nigeria is an artificial entity and it is the officials of the body that control the money or funds in the coffers of the entity. Based on this fact, I am unable to accept the contention of the cross-appellant that the provision of Section 84 of the Sheriffs and civil process Act are not applicable to the facts of the case.

It appears that this Court has taken the position in all its latest decisions on the subject that the Appellant is a public officer within the

contemplation of the provisions of the SCP Act and I am not only in agreement with that position, I am indeed bound by it.

The 1st Respondent's learned counsel has strenuously urged us to follow the decision of the Supreme Court which we are indeed bound to in the case of **CBN VS. INTERSTELLER COMMUNICATIONS LTD & ORS. (supra)** where he insisted that the Apex Court held that the Appellant (CBN) was a public officer within the contemplation of the SCP Act. I read that decision and found the facts therein are very different from the facts of this case in the sense that the AGF was a party to that suit along with the Federal Government of Nigeria (FGN). Judgment was entered against them both, in favour of NITEL in the sum of N23billion. The FGN (3rd Respondent) and its AGF (4th Respondent) commenced paying the judgment debt up to 30% (N12 billion) and then stopped payment. This led the judgment creditors to commence garnishee proceedings against their funds with the CBN. When the issue of notice and consent of the AGF, pursuant to Section 84 of the SCA was raised before commencing the garnishee proceedings; both the trial Federal High Court and this Court held that the provisions of the Act were not applicable to the facts of the case because the AGF was a party to the suit and had commenced payment of the judgment debt and therefore he had both knowledge and consented to the payment of the judgment debt, which he commenced payment. The Apex Court (per OGUNBIYI JSC) agreed with that position and held inter alia that since the AGF participated in the settlement of the judgment debt part of which was already paid, he was adequately notified and had consented to the garnishee proceedings and held further that; *"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 of this case."

It is important to remember that before the principle in the doctrine of *stare decisis* can apply, the facts of the case under consideration must be the same or be very similar to the facts of the earlier case. Where the facts of the cases are not on all fours or similar, the doctrine of *stare decisis* will not apply. See **ADEGOKE MOTORS LTD VS. ADESANYA (1989) 3 NWLR (PT. 109) 250** among several others. It is my view that the facts of the case of **CBN VS. INTERSTELLAR COMMUNICATIONS LTD & ORS (supra)** are very different and distinguishable to the facts of this case. As such, the Interstellar case is not applicable to the facts of this case and I so hold.

It is pertinent to also state that the 2nd to 4th Respondents are all public officers as already stated *supra* and their funds, either in their custody or in the custody of the Appellant (CBN) cannot be proceeded against in a garnishee proceedings without the prior notice and consent of the AGF as demanded by the provisions of Section 84 of the SCP Act. There is nothing in the record of this appeal that showed the 1st Respondent has complied with the said provisions and notified and/or obtained consent of the AGF or that the AGF was in the know of the judgment debt (as was the case of **CBN Vs. INTERSTELLAR Ltd**) before commencing the garnishee proceedings against the funds of the 2nd to 4th Respondents in the custody of the Appellant. It therefore means that the jurisdiction of the trial Court has not been

properly activated to determine the proceedings and I so hold. Consequently, the garnishee order absolute that the trial Court made against the Appellant on the 5th March, 2021 was done without jurisdiction and therefore amounted to a total nullity. I resolve the lone issue against the Appellant. This appeal has merit and it is allowed by me. The decision of the Federal High Court, Uyo judicial division delivered on the 5th March, 2021 in respect of Suit NO: FHC/UY/CS/7/21 is hereby set aside. The proceedings commenced by the 1st Respondent in the said suit are struck out. Parties to bear their respective costs.



B. Aliyu
BALKISU BELLO ALIYU
JUSTICE, COURT OF APPEAL.

APPEARANCES:

GODWIN UDONDIAH ESQ. FOR THE APPELLANT.

E. E. OSIM ESQ. FOR THE 1ST RESPONDENT.

2ND RESPONDENT SERVED ON 25/10/2022.

3RD RESPONDENT SERVED ON 27/10/2022

4TH RESPONDENT ON 27/10/2022.



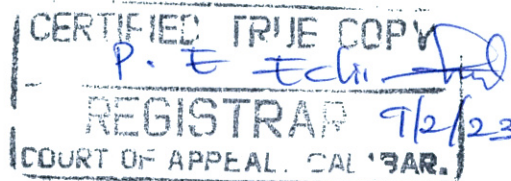
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RAPHAEL CHIKWE AGBO, JCA

I agree




RAPHAEL CHIKWE AGBO, JCA
JUSTICE, COURT OF APPEAL.



CA/C/121/2021
OYEBISI FOLAYEMI OMOLEYE

I had the privilege of reading the draft of the leading judgment, in this appeal, just delivered by my learned Brother, **BALKISU BELLO ALIYU**, JCA.

I agree with his Lordship that the appeal is imbued with merits for the reasons, stated in the leading judgment, which I adopt as mine.

This appeal is therefore also allowed by me and I abide by the consequential orders made in the leading judgment.




OYEBISI FOLAYEMI OMOLEYE
JUSTICE, COURT OF APPEAL

