CHAPTER FOUR

REQUIREMENT OF ATTORNEY GENERAL'S CONSENT UNDER SECTION 84 OF THE SHERIFFS AND CIVIL PROCESS ACT

4.1 INTRODUCTION

Section 84 the Sheriffs and Civil Process Act (SCPA) makes provision for the attachment of money in the custody or under the control and of the court or a public officer through garnishee proceedings.

The purport of section 84 is that where money in the custody or control of a public officer, in his official capacity, is liable to be attached by garnishee proceedings the consent of the appropriate officer must first be obtained. The "appropriate officer" referred to being the Attorney General of the Federation or Attorney General of a State depending on whether the public officer is in the public service of the Federation or of a State respectively.[1] Where the money is in *custodia legis* (i.e., custody of the court) the leave of the court is necessary for the same order.

There is controversy as to whether the term "public officer" as used in section 84 refers to both natural and artificial persons. It would seem this was settled over five decades ago in the case of *Barclays Bank, D.C.O. v. Baderinwa: Re L.E.D.B.*[2] when the court held that the term "public officer" in section 84 of the SCPA is used restrictively and refers only to natural persons who hold public office in the public

[1] s. 84 (3) SCPA.
[2] (1962) 2 All NLR 731.

service of the Federation or of a State.[3] Albeit the debate as to whether or not a statutory corporation, Ministry, Government Department or Agency qualify as a public officer for purposes of section 84 of the SCPA lingers.[4]

The court was clear that a statutory corporation, Ministry, Government Department or Agency does not qualify as a public officer for the purpose of section 84 of the SCPA.[5] Section 84 has also been said to be antiquated[6] and cannot stand under the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria and to that extent the consent of the Attorney General (AG) is not required for the enforcement of the judgment of a court.[7]

The Apex court in Nigeria recently had the opportunity to put an end to the controversy but failed to do so as it merely held that where the Attorney-General is a party to the suit it is unnecessary to apply for consent.[8]

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[3] *Ibid.,* at p. 733, per de Lestang, J.

[4] See also *CBN v. Hydro Air Pty Ltd* (2014) 16 NWLR (Pt. 1434) 482 at 521 -522; and *Ibrahim v. J.S.C.* (1998) 14 NWLR (Pt. 584) 1 per Iguh, JSC decisions wherein the definition of the term "public officer" was equated with "public department" and to include every officer or department invested with the performance of public duties, contrary to *C.B.N. v. Njamenze* (2015) 4 NWLR (Pt. 1449) 276 where the court held that CBN is not a public officer for the purpose of garnishee proceedings. The court per Agbo JCA queried thus: The question to ask then is: is the CBN an officer or institution and what is its function in respect of this money of the federation that is in its custody? The Court of Appeal in *C.B.N. v. Interstella Comms. Ltd.* (2015) 8 NWLR (Pt. 1462) 456 also gave a restrictive interpretation of the term "public officer" when it held that, "the term 'public officer' relates to the holders of the office as reflected only in section 318(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The provision of section 84 of the Sheriffs and Civil Process Act also refer to a public officer as a holder, officer or person holding a public office… 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." This is discussed more extensively in the later portions of this chapter.

[5] *Barclays Bank, D.C.O. v. Baderinwa: Re L.E.D.B***.** (1962) 2 All NLR 731. MDAs and Statutory bodies, being artificial persons **do not hold office in the Federal or State Civil Service**.

[6] The provision was inherited from colonial masters, the British, who themselves have since 1947 abolished the provision by the promulgation of the Crown Proceedings Act, 1947 in accordance with the global modern trend.

[7] *El Shaddai International Ltd v. Federal Republic of Nigeria* (2002) FNL (2005) 6 NWLR (Pt. 921) 393R 395, *Coram* Bello, J.

[8] *Central Bank of Nigeria v. Interstella Communications Limited & Ors* (2017) LPELR-43940 (SC)

The Supreme Court in *CBN v. Interstella Communications Ltd*[9] restricted itself to the peculiar facts and circumstances before it. The decision of course was not unconnected with the fact that the Court of Appeal had earlier held that where the Attorney-General pursuant to a judgment of court, has admitted owing a certain sum of money and even made part payment thereof, then it will not be necessary to seek his consent before proceeding to attach Government's fund in execution of the judgment in question.[10]

The Supreme Court Justices opined that it would be unconscionable and against the demands of justice for the AG, being a judgment debtor, having been an active participant in the various stages of negotiations, transactions and even part payment of the debt owed, to be perceived as a nominal party or maintain the neutrality required to make his consent applicable in the circumstance[11]

The court in holding that the CBN was not a public officer and that AG's consent was unnecessary given the peculiar facts and circumstances of the case focused on its duty to do substantial justice by discountenancing all the unsustainable technical clogs employed by the appellant and dismissed the appeal.[12]

4.2 A TALE OF TWO CASES: *PURIFICATION TECHNIQUES NIG LTD (PTN) v. AG LAGOS; & ONJEWU v. KSMCI*

The above notwithstanding, the controversy over the requirement, which is the

[9] (2017) LPELR 43940 (SC)
[10] *CBN. v. Interstella Comms. Ltd.* (2015) 9 NWLR (Pt. 1463) 1 CA
[11] *CBN. v. Interstella Comms. Ltd.* (2017) LPELR 43940 (SC) per Clara Bata Ogunbiyi, JSC at pp. 68-81 paras D - C and per Mary Ukaego Peter-Odili, JSC at pp. 124 -126 paras C - A
[12] *Ibid*, see per Ogunbiyi, J.S.C. at p. 93, paras. A-D

applicability of the Attorney General's consent under section 84 and the constitutionality of the section altogether, rages on. Two diametrically opposed decisions of the Court of Appeal (namely, in the cases of: *Purification Techniques (Nig.) Ltd (PTN) v. Attorney General of Lagos State & 31 Ors*[13]*; and Onjewu v. Kogi State Ministry of Commerce & Industry (K.S.M.C.I.) & 2 Ors*[14]) are at the forefront of this controversy which has given rise to two opposing schools of thought. Both cases have been cited copiously by the Lordships of the Court of Appeal and Supreme Court in justification of their decisions.[15]

In *Onjewu v. K.S.M.C.I.*[16] the judgment creditor (Onjewu) sought to recover through garnishee proceedings a judgment debt in the sum of N8,701,448.00k for consultancy services rendered to the judgment debtor (KSMCI) for the construction of a permanent trade fair complex at Felele, Lokoja. The issue for determination was whether section 8(3) of the State Proceedings Edict, 1988 and section 84(1) of the Sheriffs and Civil Process Law of Kogi State[17] are legally valid having regard to the provisions of sections 287(3), 6(6)(b) and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) and whether the trial court was right to have invoked it to set aside the garnishee order absolute. The Court of Appeal dismissed the appeal and upheld the ruling of the trial court that the requisite consent under section 84 was necessary.

[13] (2004) 9 NWLR (Pt. 879) 665.
[14] (2003) 10 NWLR (Pt. 827) 40; (2002) LPELR 5507 (CA).
[15] Particularly as regards the tangential and twin issue(s) as to whether the CBN is a "Public Officer" and whether the requirement that the AG's Consent must first be obtained before commencing garnishee proceedings to attach funds in the custody and or control of the CBN. See *CBN v. Interstella (at CA and SC) CBN v Njemanze (2015); CBN v. Oscko Petroleum (2015); CBN v. Ukpong (2006); CBN v. Zakari (2018); CBN v. Amao (2010); CBN v. Kakuri (2016); CBN v. Doma (2018); CBN v. Umar (2019); CBN v. Abubakar (2019); CBN v. Appah (2020); CBN v. AMCON (2017); CBN v. Hydro Air Property Ltd (2014); CBN v. Eze (2021); CBN v. Ezeanya (2022).*
[16] *Supra. (n. 14)*
[17] Which provisions are similar to s. 84 of the SCPA.

In the case of *Purification Techniques (Nig.) Ltd* (PTN) *v. A.G. of Lagos State*[18] the respondent successfully set aside the garnishee order *nisi* at the trial court on the ground that it was sought and obtained while the respondent's motion for stay of execution was pending and that the monies held by the respondent in a bank is in the custody or under the control of a public officer and, therefore, subject to the provisions of section 84 of the Sheriffs and Civil Process Act (SCPA) which requires the consent of the Attorney General before the monies could be attached in satisfaction of the judgment debt. The Court of Appeal unanimously allowed the appeal and held that monies in the hands of a garnishee banker are not in the custody or control of the judgment debtor customer or a public officer. Consequently, such monies are not subject to the provisions of section 84 of the SCPA as contended by the respondent.[19]

Galadima, JCA, in examining the issue of **custody or control** put it thus:

> *"The second issue is whether monies held by a State Government/judgment debtor in a bank is in custody or under the control of a public officer and therefore subject to the provisions of S.84 of the Sheriffs and Civil Process Act, Cap. 407, Laws of Federation, 1990.*
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> *... There is absolutely no basis for treating government bank accounts any differently from bank accounts of every other juristic personality or customers. The relationship of a banker to customer is contractual. It is essentially that of a debtor to a creditor, in the case of credit balances. The classic description of the contractual relationship that*

[18] (2004) 9 NWLR (Pt. 879) 665.
[19] *Ibid*, p. 680, paras. G-H.

exists between banker and customer is aptly given by Atkin L.J. in Joachimson v. Swiss Bank Corp. (1921) 3 K.B. 110 at 127 which was in the following terms:

"The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such a contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept."

The decisions in Joachimson v. Swiss Bank Corp. (supra), as well as that in the leading case of Foey v. Hill (1882) 2 HL Cas. 28, have been cited and followed by the apex Court of this country in Yesufu v. A.C.B. (1981) 1 SC 74, (1981) 12 NSCC 36 and Balogun v. N.B.N. (1978) 3 SC 155, (1978) 12 NSCC 36. Therefore, ***given the nature of the relationship between banker and customer and of the contract that***

exists between them. The customer has neither the "custody" nor "the control" of monies standing in his credit in an account with the banker. What the customer possesses is a contractual right to demand repayment of such monies*. In the case of Hirschhorn v. Evans (1938) 3 All E.R. 491 cited with approval by the Supreme Court in Yusufu v. A.C.B. (supra) Mackinnon U. had this to say:*

"There is, of course never any question of property in the credit balance of a bank account. The relation of banker and customer is simply that of debtor and creditor..."

In my respectful view, I can say that monies in the hands of garnishee banker are not 'in custody or under the control' of the judgment debtor customer. Such monies remain the property in the custody and control of the banker; and payable to the judgment debtor until a demand is made. *Hence, Order VIII Rule 2(b) of the Judgments (Enforcement) Rules takes care of this by providing that 'garnishee proceedings may be taken where the debt is not yet payable in any Court in which the judgment debtor could have sued the garnishee as aforesaid if the debt had been immediately payable."*[20]

The Court further held that the existence of an application seeking for an order of stay of execution of a judgment does not preclude a judgment creditor from seeking to use garnishee proceedings to enforce the judgment. This distinction is made clear from section 19 of the SCPA which excludes garnishee proceedings from the

[20] *Purification Techniques (Nig) Ltd v. A.G Lagos State* (2004) LPELR-7424(CA) at pp. 13-17 paras. A-A

definition of a writ of execution and by the fact that Order 8 rule 7 of the Judgments (Enforcement) Rules (JER) which provides that execution could issue against a garnishee.[21]

It is worthy to note that the facts of *PTN v. A.G. Lagos State*[22] and *Onjewu v. KSMCI*[23] are similar, if not on all fours. The Judgment Debtors were either the State Government or an agency of the State Government, while the garnishees were commercial banks[24] and not public officers. Therefore, section 84 of the SCPA did not apply. In *Onjewu v. KSMCI* the garnishee was a bank (First Bank of Nigeria Plc.) and not a "public officer" as required by section 84. Likewise, the KSMCI (the judgment debtor/and government agency) was **neither in custody or control of the judgment debt nor a "public officer" for purposes of section 84** of SCPA which as observed earlier above excludes artificial persons from its restricted meaning and use of the term in the section.

The customer of a bank does not have control or custody of monies standing to his credit in an account with his banker. The relation of banker and customer is simply that of debtor and creditor. Monies in the hands of a garnishee banker are not '*in custody or under the control'* of the judgment debtor customer. Such monies remain the property in the custody and control of the banker; and payable to the judgment

[21] *Ibid.*, pp. 678 -679, paras. D-A.
[22] (2004) 9 NWLR (Pt. 879) 665.
[23] (2003) 10 NWLR (Pt. 827) 40.
[24] In *Purification Techniques* case the Judgment Creditor had sued all 29 commercial /deposit money banks in existence at the time as well as the NDIC and CBN as 30th and 31st Respondents respectively. This practice of suing all the commercial banks is founded on the **shot-gun theory** approach (simply put, ***more is better***). If you fire a sawed-off shot gun in a room full of people, the probability that you will hit more people (including your target) is higher. Similarly, by suing all the registered banks within jurisdiction there is a greater probability that none of the judgment debtor's bankers would be excluded. Each bank by law is required to file an affidavit to show cause and their liability would be determined on the return date. The court upon hearing each bank would decide whether or not to make the order absolute or discharge the bank.

debtor until a demand is made. [25] Given the fungible nature of money it cannot be otherwise, if not I dare say banks would not with all confidence and lawfully be able to pool depositors' funds and trade with same, invest, create loans, or risk assets, finance projects, open letters of credit and give credit facilities with said funds in various contracts with other customers of the bank.

It, therefore, follows that both the trial court and the Court of Appeal were wrong in acceding to the argument of the respondents' counsel and setting aside the order absolute on ground that the failure of the appellant to obtain the consent of the Attorney General of the State robbed the court of the jurisdiction to make the order absolute.

The decision in *PTN v. A.G. Lagos State* is based on a proper interpretation and application of the law and it is later in time to the decision in *Onjewu v. KSMCI* which was decided in 2003. It is therefore, submitted that the decision in *PTN v. A.G Lagos State*, which was delivered in 2004, represents the true position of the law.

4.3 WHO THEN IS A PUBLIC OFFICER UNDER S.84 SCPA?

Section 84 (1) of the SCPA provide that 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, the order nisi shall not be made unless consent to such attachment is first obtained from the appropriate officer.
Subsection (3) defines "appropriate officer" to mean the Attorney-General of the Federation and the Attorney-General of the State in relation to money which is in

[25] *Purification Techniques v. AG Lagos, Ibid supra.*

the custody of a public officer who holds a public office in the public service of the Federation; and the public service of the State, respectively.

It is curious to note that a public officer is not defined in section 84, rather a reference is made to the public officer as a holder of public office in the public service of the Federation or State.

Section 18(1) of the Interpretation Act[26] defines "public officer" as, “a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or of the public service of a State”

Section 318 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) provides that:

> *"public service of the Federation" means the service of the Federation in any capacity in respect of the Government of the Federation and includes service as: (a) Clerk or other staff of the National Assembly or of each House of the National Assembly; (b) member of staff of the Supreme Court, the Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja, Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of the Federal Capital Territory, Abuja or other courts established for the Federation by this Constitution and by an Act of National Assembly; (c) member or staff of any commission or authority established for the Federation by this*

[26] Cap I23, LFN 2004

Constitution or by an Act of the National Assembly; (d) staff of any area council; (e) staff of any statutory corporation established by an Act of the National Assembly; (f) staff of any educational institution established or financed principally by a Government of the Federation; (g) staff of any company or enterprise in which the Government of the Federation or its agency owns controlling shares or interest; and (h) members or officers of the armed forces of the Federation or the Nigeria Police Force or other government security agencies established by law."

4.4 IS CBN A PUBLIC OFFICER?

(a) Proponent of the position that Central Bank of Nigeria (CBN) is not a public officer within the ambit of section 84 SCPA posit that the combined effect of section 18(1) of the Interpretation Act and section 318 of the 1999 CFRN is that "public officer" only means individual staff of Government[27] bodies or Institutions, not the institution or body itself. A public officer is a natural person who is a member of the public service. Therefore, artificial persons (i.e., Government Ministries; Departments, Parastatals and Agencies) in which such person (i.e., public officer) is employed as a member of staff are excluded. Using the canon of interpretation of *expression unius est exclusion alterius*[28] the express mention of only natural persons in the definition of "public service of the Federation" in section 318 automatically excludes artificial entities in the definition of a public

[27] Government as used here refers to both the Federal and State Governments.
[28] The expression of one thing is the exclusion of the other.

officer. It is further argued that CBN is a separate and distinct legal personality[29] from its members of staff and that interpreting section 318 to include artificial entities will be tantamount to stretching the meaning of public officer beyond acceptable limits and importing into the Constitution what the draftsman never intended.[30] It is trite law that where words of a statute are clear and unambiguous, they should be given their ordinary grammatical meanings.[31]

The position that the meaning of public officer in section 84 SCPA does not include artificial persons finds judicial imprimatur in a swath of Court of Appeal decisions. The Court in *Green Bay Investment & Securities Ltd v. Federal Ministry of Mines & Steel*[32] case adopted the restrictive interpretation of section 84 and held that the CBN was not a public officer for purposes of s.84, stating that the issue whether public officer as used in s.84 refers to artificial persons had since been settled in *Barclays Bank, DCO v. Baderinwa: Re LEDB*[33]
In *CBN v. Njemanze*[34] the Court of Appeal held:

> *I definitely do not have any problem with classifying the officers of the CBN as public officers, but I find it unacceptable to classify CBN 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*

[29] Section 1, subsection (1) of CBN Act, 2007 establishes the Central Bank of Nigeria (referred to as "the Bank"). Subsection (2) provides that, "The Bank shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name."
[30] Which is that the term "public officer" should only relate to holders of public office
[31] *Uwak & Ors v. Sampson & Ors* (2016) LPELR-41216(CA) at pp. 15-17 paras. D, Per Oyewole, JCA, Citing the Supreme Court in *Dangana & Anor v. Usman* (2012) LPELR 25012 (SC). See also *Fawehinmi v. I.G.P.* (2000) 7 NWLR (Pt. 665) p. 481; and *Awolowo v. Shagari* (1979) 6-9 SC 51.
[32] Unreported Appeal No. CA/A/260/2008 judgment delivered 22/1/2016; This position was reiterated recently in *CBN v. Green Bay Investment & Securities Ltd & Ors* (2022) LPELR-58277(CA) at pp. 48-51, paras A – F, Per Georgewill, JCA citing CBN v. Njemanze, *supra* and CBN v. Interstella Comm. Ltd, *supra* as authorities for the position that the controversy around AG's consent and whether CBN was a public officer had been settled.
[33] (1962) 2 All NLR 731
[34] (2015) 4 NWLR (Pt. 1449) 276, Per Agbo, JCA at pp. 287 - 288

of Nigeria. Thus, for the purpose of garnishee proceedings, the CBN acts as a Banker to the Federal Government as encapsulated in Sections 2(e), 36 and 39 of the Central Bank of Nigeria Act respectively.[35]

(b) On the opposite side of the divide are a cache of Court of Appeal decisions to the effect that the CBN, including other Government Agencies are public officers within the meaning and intendment of section 84 SCPA. They argue that a purposive interpretation of section 84 SCPA and from a community reading of section 18(1) of the Interpretation Act and section 318 of the 1999 CFRN it is crystal clear that the CBN, a statutory corporation established by an Act of the National Assembly, is a public officer being a part of the Public Service of the Federation of Nigeria.[36] "Public officer" as used in section 84 of the SCPA refers not only to natural persons but also to artificial persons.[37]

In *CBN v. Kakuri*[38] Agim, JCA puts forward the purposive argument thus:

"The term "public officer" in the Section 84 of the Sheriffs and Civil Process Act must be interpreted purposively to include the public office or department of government in which the public officer works. This is

[35] Also cited with approval by Abba Aji, JCA (as he then was) in *FGN & Anor v. Interstella Communications Ltd & Ors* (2014) LPELR-23295(CA) at pp. 31-39 para. D

[36] See *CBN v. Hydro Air (Pty) Ltd* (2014) 16 NWLR (Pt. 1434) 482; *CBN v. AMCON* (2017) LPELR 42986 (CA); and *CBN v. Maiyini Century Co Ltd & Anor* (2017) 43024 (CA). All citing *Ibrahim v. J.S.C.* (1998) 14 NWLR (Pt. 584) 1 per Iguh, JSC decisions wherein the definition of the term "public officer" was equated with "public department" and includes every officer or department invested with the performance of public duties

[37] See *CBN v. Okefe* (2015) LPELR 24825 (CA) at pp 46 -47; *CBN v. Zakari* (2018) LPELR 44751 (CA) at pp. 23-26; *CBN v. Kakuri* (2016) LPELR 41468 (CA); *CBN v. Abubakar* (2019) LPELR 48261 (CA).

[38] *Supra*, at p. 20 See also *CBN v. Ukpong* (2006) 13 NWLR (pt. 998) 55. *CBN & Ors v. Aite Okojie* (2015) LPELR-24740(SC); *CBN v. James Ejembi Okefe* (2015) LPELR-24825(CA); and *Fidelis O. Agboroh v. The West African Examinations Council (WAEC)* (2016) LPELR-40974(CA). as examples of cases wherein CBN and other Govt. institutions were treated as "public officers".

because he is a public officer by virtue of his employment in the public office or government department. Secondly, the public office or government department being an abstract and inanimate entity that carries out its public duties through its officers.

It is pertinent to note that the Court of Appeal is settled on the fact that officers of CBN are public officers, but the area of divergence is whether CBN itself and its officers are one and the same or whether CBN is a separate and distinct entity from its officers and that it has custody or control of funds in its capacity as a banker to the government and banker to banks, creating only a banker-customer relationship.[39]

In view of the conflicting Court of Appeal decisions there is a need for the Supreme to settle the matter and put an end to the controversy. When faced with conflicting decisions the lower courts may be obliged to follow the latter in time[40] but there are also decisions which hold that the lower court is free to choose.[41]

4.5 WHAT EXACTLY DID THE SUPREME COURT DECIDE IN *CBN v. INTERSTELLA*?

The court was quick to distinguish the peculiar facts and circumstances of the case[42], to wit: the fact that the Attorney General (AG) was a party and judgment debtor in

[39] Babatunde, B., *Garnishee Proceedings: Issues and Challenges For the Central bank of Nigeria, vide infra.*
[40] *CBN v. Messrs Hybrid Engineering Co. Ltd* (2021) LPELR 56468 (CA) at pp. 12 paras. B - C, per Adumein, JCA citing the Supreme Court in *Cyril O. Osakue v. Federal College of Education, Asaba* (2010) 10 NWLR (Pt. 1201) 1; (2010) 3 SCNJ 529 at 546, Per Ogbuagu, JSC - "Where there are two conflicting judgments of the Supreme Court, on an issue, the later decision is that which must be followed if circumstances are the same."
[41] *Sanni v. Unity Bank Plc. & CBN* (2017) LPELR 50197 (CA) per Ikyegh, JCA p. 14, paras. B-C - "The Court of Appeal is entitled to choose from its conflicting decisions which one to follow. Invariably, the choice goes for the decision later in time vide *Thor Ltd. v. FCMB Ltd.* (1997) 1 NWLR (pt. 497) 35, *NEPA v. Onah* (1997) 1 NWLR (pt. 484) 680."
[42] See per Ogunbiyi, JSC at 74.

the proceedings. Furthermore, part payment of the judgment debt had been made thus rendering the requirement of obtaining consent unnecessary. The court also noted that justice would demand that the AG was a neutral/nominal party to come under the purview of section 84 of SCPA.[43]

Background And Facts

The 1st and 2nd respondents (Interstella Communications Ltd and Obi Barth Thompson) sometimes in 2004 sued the Nigerian Telecommunications Ltd (NITEL) at the Federal High Court, Umuahia in suit No. FHC/UM/CS/95/04 for breach of contract and damages therefrom and judgment was delivered in favour of the 1st and 2nd respondents on 6th November 2007 by Hon. Justice H. T. Sobo.

As at October 2008, the Judgment debt stood at over N23 Billion and $48 Million. Consequently, an inter-ministerial Committee was set up in intervention, by the Federal Government of Nigeria for the amicable settlement of the Judgment debt with the 1st and 2nd respondents. The parties agreed on the sum of N12 Billion in full and final settlement of the judgment debt of N23 Billion. The said sum of N12 Billion was entered as consent judgment of the Federal High Curt, Umuahia Judicial Division, on the 17th of June 2009.

The 3rd and 4th respondents (The Federal Government of Nigeria and the Attorney-General of the Federation) commenced the payment of the said Judgment debt, paid less than 30% but reneged to liquidate all. Because of the delay and frustration by the 3rd and 4th respondents to defray the said Judgment debt, the 1st and 2nd

[43] See per Mary Peter-Odilli, JSC at 76- 77.

respondents instituted garnishee proceedings against them. The Garnishee/appellant (CBN) did not show cause but rather, in conjunction with the 3rd and 4th respondents elected to raise Preliminary Objection to the procedure adopted by 1st and 2nd respondents in commencing the Garnishee Proceedings. This objection was dismissed by the trial court and consequently made the order nisi absolute.

The appellant herein being dissatisfied with this lower court's decision, appealed to the Court of Appeal. In a unanimous decision given on the 9th day of May 2014, the appeal was dismissed, and judgment of trial court was affirmed. It must be noted at this time, that the judgment debtors did not appeal against the original judgment.

The appellant who was dissatisfied with the concurrent findings on fact and law by the two lower courts has now further appealed to the Supreme Court. The appellant's Counsel urged the learned Justices of the Supreme Court to allow his appeal and to set aside the decision of the Court below, which affirmed the Judgment of the trial court and strike out the garnishee proceedings for want of jurisdiction.

Five issues were formulated for determination from his 14 grounds of appeal, which amongst others, include – 4th issue:

Whether the Court of Appeal was right when it held that the appellant (CBN) was not a Public Officer and as such, the consent of the Attorney-General of the Federation was not required for attachment of funds in its custody in the garnishee proceedings.

HELD:

The Supreme Court, in the lead Judgment delivered by Ogunbiyi, J.S.C, while

dismissing the appeal, held that -

> *"**by virtue of Section 2(e) of the Central Bank of Nigeria Act, the Central Bank of Nigeria acts as a banker and provides economic and financial advice to the Federal Government of Nigeria. Further, by Section 36 of the Act, the Bank receives and disburses Federal Government moneys and keeps accounts thereof. In this case, the relationship between the appellant and the 3rd and 4th respondents was that of a banker and customer relationship. In other words, the appellant was not a public officer in the context of the provision of Section 84 of the Sheriffs and Civil Process Act. So, the need to seek the consent of the Attorney-General did not arise"**.*

It must be noted that the Supreme Court did not abolish the requirement of AG consent under section 84 SCPA. The court restricted itself to the issues before it. Rather than pronounce on the constitutionality or otherwise of section 84 SCPA, **the court merely created an exception to section 84 SCPA in view of certain peculiar facts and circumstances.** It would appear that the consent of AG under section 84 SCPA is still applicable as a pre-condition where money intended to be attached through garnishee proceedings is in custody or control of a public officer.[44] The exception is when the AG is a party and judgment debtor, and part payment of the judgment debt has been made in compliance with the order *nisi* or order absolute.

[44] Same remains as a condition precedent in line with the decision in *Madukolu v. Nkemdilim* (1962) 2 SCNLR 34; LPELR 24023 (SC) as well as (1) *C.B.N. v. Amao* (2010) 16 NWLR (Pt.1219) p.271; (2) *C.B.N. v. Hydro Air P.T.Y. Ltd.* (2014) 16 NWLR (Pt.1434) p.482; (3) *C.B.N. v. J.I. Nwanyanwu & Sons Enterprises Nig. Ltd*. (2014) LPELR - 22745 and (4*) Utomudo v. Mil. Governor of Bendel State* (2015) EJSC (Vol.3) p.1. See also (1) *Onjewu v. Kogi State Ministry of Commerce & Industry* (2003) 10 NWLR (Pt.827) 40; (2) *Government of Akwa Ibom State v. Powercom (Nig.) Ltd.* (2004) 6 NWLR (Pt.868) 202.

The Supreme Court decision in *CBN v. Interstella* has elicited some scholarly articles[45] and already has been cited with approval by the Court of Appeal in a number of cases. Some of the Law Lords are of the opinion that the matter has been laid to rest. Hussaini, JCA in *CBN v. Appah*[46] held as follows:

> "*The decision of the Supreme Court in CBN v. Interstella Communications Ltd (2018) 7 NWLR (pt. 1618) 294 has* ***put paid, all the raging controversies as to whether the Central Bank of Nigeria (CBN) is a "Public Officer" or not, with this decision, it is now the law that the Central Bank of Nigeria (CBN) is not a "Public Officer"*** *within the meaning of Section 84(1) of the Sheriff and Civil Process Act, as distinguished from the Supreme Court decision in Ibrahim v. Judicial Service Commission, Kaduna State, (1998) LPELR - 1408 (SC) where the provision of Section 84(1) of the Sherriff and Civil Process Act was not considered. The effect of the decision in CBN v. Interstella (supra) is that the prior consent of the Attorney- General of the Federation is not necessary before execution can be levied against the Central Bank of Nigeria (CBN)."*

[45] See Nneji, Chris Onyekachi, *A Critical Review Of The Supreme Court's Decision In CBN v. Interstella Communications Ltd. & 3 Ors (2018) 7 NWLR (Pt. 1618) 294, Vis A Vis Section 84 Of Sheriffs And Civil Process Act*. IBJ (1) 2021 pp 10 -18 https://ezenwaohaetorc.org/journals/index.php/IBJ/article/viewFile/1506/1549 (Last accessed 9/23/2022); See also Babajide Babatunde, *Garnishee Proceedings: Issues and Challenges For the Central bank of Nigeria, Paper presented at the 2018 Retreat of the Legal Service Department of the CBN from 13th -14th December 2018.* Both scholars are of the view that the matter has not been settled since the court confined itself to the peculiar facts of the case, therefore a mere exception to s.84 SCPA was created where the AG is the Judgment debtor and party to the garnishee proceedings. This author is, however, inclined to submit that *CBN v Interstella* case has settled the matter by holding that CBN is not a public officer (but a banker of Govt. or banker to banks) for purposes of s. 84 SCPA and therefore the requirement that the AG's consent must first be obtained before commencing garnishee proceedings *to attach money in custody or control of a public officer is unnecessary and inapplicable.*

[46] (2020) LPELR-51214(CA) at pp. 23-24 paras. E, Per Hussaini, J.C.A

The Court of Appeal in *CBN v. Ezeanya & Ors*[47] in holding that CBN was not a public officer also held that the Supreme Court in *CBN v Interstella Comm. Ltd*[48] has put an end to the controversy after an extensive review of relevant cases and statutes:

> *"The Appellant Counsel submitted that the Appellant was a public officer as contemplated by Section 84 of the Sheriffs and Civil Processes Act. Is the Appellant a "public officer" within the intendment of Section 84 of the Sheriffs and Civil Processes Act and under the Section 318 of the Constitution of the Federal Republic of Nigeria and also under the Enforcement Act.*
> *Section 84(1) of the Sheriffs and Civil Processes Act provides:*
>
> *"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 custodia legis, the order nisi shall not be made under the provision of the last proceeding Section unless consent to such attachment is first obtained from the appropriate officer in the case of money in custody or control of a public officer or of the Court in the case of money in custodia legis, as the case may be."*
>
> *The above provision requires the consent of the appropriate officer that is the Attorney General of the Federation or of state where the money liable to be attached is in the custody or under the control of a public officer in his official capacity. In the case under consideration, the*

[47] (2022) LPELR-57598(CA) at pp. 21-28 paras. B, per Bola, J.C.A
[48] *Supra.*

money to be garnished is in custody of the Appellant, the Central Bank of Nigeria. Is the Central Bank of Nigeria a public officer within the intendment of the Section 84 of the Sheriffs and Civil Processes Act?

A sea of cases have decided that the Central Bank of Nigeria is a public officer with the meaning of Section 84(1) of the Sheriffs and Civil Processes Act, amongst these cases are CBN v. Ainamo (2019) NWLR (Pt. 1672) 407 at pages 419-421; CBN v. Oodo (Supra); CBN v. Okojie (2015) LPELR-24740; CBN v. Ukpong (2006) 13 NWLR (Pt. 998) 555 and CBN v. Zakari (2018) LPELR-44751 (CA) amongst others. In the present appeal, the Appellant relied on and quoted torrentially the decision of the Court of Appeal in CBN v. Zakari. It need be said that this decision dealt extensively on the definition of the word public service under Section 318 of the Constitution of the Federal Republic of Nigeria 1999 and cases decided by this ***Court to come to the conclusion that the Appellant (CBN) was a public officer.***

However, the above decision could not be said to be a unison decision amongst the Appellate Courts. ***Some other decided cases holds a contrary view to the effect that an artificial entity created by law cannot be a public officer under the provision of Section 84 of the Sheriffs and Civil Processes Act.*** *This decision emanate from the cases of CBN v. Njemanze (2015) 9 NWLR (Pt.1663) 1 at 36; Alamieyeseigha v. Igoniwari (No.2) (2007) 7 NWLR (Pt.1034) 314 at 579; Sharika & Sons v. Interstella Communication (2015) 8 NWLR (Pt. 1462); FGN v. Interstella Comms (2015) 9 NWLR (1663) 1 at 36.*

It is the contention of the 1st Respondent that the term public" officer is defined to relate to the holders of the public office as reflected in Section 318 of the Constitution which defines public office to include ***"staff of any statutory corporation established by an Act of the National Assembly."*** *Therefore, the Central Bank of Nigeria not being a* ***staff*** *but an office could not be said to be a "public officer".*

In the light of this can this Court place reliance on the case Central Bank of Nigeria v. Interstella Communication Ltd (2018) 7 NWLR (Pt. 1618) 294 at 346-347 where the Supreme Court held as follows:

"The other leg of this argument is where 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.

Relevant to this conclusion is again the persuasive authority of the CBN v. Okojie (2006) 13 NWLR (Pt. 998) 555 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 Central Bank of Nigeria:

"Generally, it is for the overall control and administration of the monetary and banking policies of the Federal Government... it is not established for commercial or profit-making purpose..."

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 Attorney General of the

Federation is obtained, does not apply to the fact and circumstances of this case."

Likewise in the case of Central Bank of Nigeria v. Shuaibu Doma (2018) LPELR-45639 (CA) 11-28, the Court of Appeal held:

"The recurrent question of whether the Central Bank of Nigeria is a public officer for the purpose of Section 84 of the Sheriffs and Civil Processes Act is, therefore, totally irrelevant...
On the facts of the circumstances of this case, the Appellant is not a public officer as to warrant the application of Section 84(1) of the Sheriffs and Civil Processes Act."
The Court of Appeal held further –

"An artificial entity created by law cannot be a public officer under the provision of Section 84 of the Sheriffs and Civil Processes Act. That is to say, the consent of the Attorney General is not necessary in this case because the Central Bank of Nigeria is not a public officer as contemplated by Section 84 of the Sheriffs and Civil Act (Supra)."

The decision of this Court in the case CBN v. Interstella Communication Ltd (2015) 8 NWLR (Pt. 1462) 457 where it was held that Section 84 of the Act does not intend the Central Bank of Nigeria to be a public officer. The Court had this to say:

"By virtue of Section 2(1) of the Central Bank of Nigeria, the Central Bank act as a banker and provides economic and financial advice to

the Federal Government of Nigeria. Further by Section 36 of the Act, the Bank receives and disburses the Federal Government moneys and keeps account thereof. In this case, the relationship between the Appellant and 3rd and 4th Respondents was that of a banker and customer relationship. In other words, the Appellant was not a public officer in the context of the provision of Section 84 of the Sheriffs and Civil Processes Act. So, the need to seek the consent of the Attorney General did not arise."

In CBN v. Njemanze (supra) the Court of Appeal held thus:

"The term 'public officer' relates to holder of the office only in Section 318(1) of the Constitution of the Federal Republic of Nigeria (as amended). Equally, Section 84 of the Sheriffs and Civil Processes Act also referred to public officer as a holder, officer or person holding a public office. In the circumstance, officers of Central Bank of Nigeria are public officers, but Central Bank of Nigeria is not a public officer."

The Court of Appeal further held:

"Having gone through Section 318(1) of the 1999 Constitution, the conclusion of this Court is that the section only refers to natural person or individuals and not artificial person like Central Bank of Nigeria the meaning of Public Officer according to Section 318(1) excludes artificial persons like Central Bank of Nigeria."
See also CBN v. Appah (2020) LCN/14063 (CA), a decision of the Kaduna Division of the Court of Appeal in Appeal No: CA/K/371/2017

Coram Adefope Okojie, JCA.

In rounding up on this issue, it is the considered view of this Court that the decision of the Supreme Court in CBN v. Interstella Communication Ltd (2018) 7 NWLR (1618) 294 has put an end to the discordant decision and controversies as to whether the Central Bank of Nigeria (CBN) is a public officer within the meaning of Section 84(1) of the Sheriffs and Civil Processes Act or not. The effect of the decision in CBN v. Interstella (supra) is that the prior consent of the Attorney General of the Federation is not necessary before execution can be levied against the Central Bank of Nigeria (CBN).

Arising from the foregoing, I hold that the Central Bank of Nigeria is not a public officer within the intendment of the provision of Section 84(1) of the Sheriffs and Civil Processes Act. In the light of this, it is equally held that the consent of the Attorney General of the Federation is not required before the commencement of the garnishee proceeding. It is therefore not necessary for the consent of the Attorney General of the Federation be sought and obtained before the lower Court could grant the Garnishee Order Nisi and eventually Garnishee Order Absolute."

Recently, Tsammani, JCA in *CBN v. Kruggerbrent & Co. Nig. Ltd*[49] also cited *CBN*

[49] (2022) LPELR 57571 (CA) at pp. 34-39 paras. E, the court also cited *CBN v. Appah* (2020) LPELR 51214 (CA); *CBN v. Njemanze* (2015) 4 NWLR (Pt. 1449) 279 and *CBN v. Access bank* (2022) LPELR 57017 (CA) in support of its position. See also *CBN v. Maggpiy Trading TFZE & Ors* (2022) LPELR-57531(CA) at pp. 19-25 paras. D-D, per Tsammani, JCA; and at pp 36 -40 paras. A – G, per Ogakwu, J.C.A.

v. Interstella Co*mm. Ltd*[50] in holding that the CBN was not a public officer for purposes of section 84 SCPA. Noting that the CBN by virtue of sections 2 (e)and 36 of the Central Bank of Nigeria Act, acts in the role of a banker, not a public officer.[51]

In contrast Owoade, JCA in the case *of CBN v. Osonoki & Ors*[52] delivering the lead judgment of the Court of Appeal adopted the argument of Appellant's counsel in debunking the position that *CBN v. Interstella Comm. Ltd*[53] had settled the matter whether or not the CBN was a public officer:

> *"The response of the learned counsel to the Respondent to issue 1 that the Appellant,* ***Central Bank of Nigeria is not a public officer cannot be countenanced having regards to the combined provisions of Section 318 (1) (e) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 18(1) of the Interpretation Act.*** *These provisions have been considered in a number of decided cases to the effect that the Central Bank of Nigeria (CBN) is a public officer. The reliance of the learned counsel for the Respondent on the decision in CBN v. Interstella Communications Ltd & 3 Ors (2018) All FWLR (Pt. 930) 442 in support of the view that the Appellant is not a public officer was thoroughly debunked in the Reply brief of the Appellant's counsel who explained the decision in CBN v. Interstella Communication Ltd & 3 Ors (supra) by quoting the Supreme Court on pages 522 - 523 of the Report as follows:*

[50] *Supra.*
[51] *CBN v. Kruggerbrent & Co. Ltd* (2022); and *CBN v. Maggpiy Trading TFZE* (2022) *Ibid, Supra.*
[52] (2022) LPELR 57210 (CA) at pp. 9-12 para. F, per Owoade, J.C.A
[53] *Supra.*

"i. That the peculiar facts of the case removed it from the purview of the general interpretation of Section 84 of the Sheriffs and Civil Process Act (SCPA) in that the consent of the Attorney General of the Federation by Exhibits I and L had already been obtained and the appellant was acting as a banker only to the Federal Government of Nigeria.

ii. That certain qualifying conditions must be met for a case to come under the purview of Section 84 of SCPA and that is the AGF must be a neutral/nominal party in the transactions and proceedings giving rise to the application for an Order Nisi and not him being the debtor.

iii. That by implication Section 84 of the SCPA which requires consent had already been fully complied with as the Government itself negotiated the terms and took steps to settle the debts before reneging on its full satisfaction.

iv. That Section 84 of the SCPA was inapplicable in the case because the AGF was the debtor and had been sued in that capacity.

v. "In the present transaction, ... 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."

vi. "Again... the consent of the AGF had all along been obtained. Consequently, the Garnishee proceedings against the appellant was rightly commenced."

vii. That "the appellant is not a public officer in the context of Section 84 SCPA, when regard is had to the history of this appeal." In the case of Central Bank of Nigeria v. James Ejembi Okefe (2015) LPELR - 24825 (CA) the Court of Appeal held that by virtue of Section 318(1) of the 1999 Constitution (as amended) and Section 18 of the Interpretation

Act, the Central Bank of Nigeria is a public officer. Earlier on, in the case of CBN v. Hydro Air PTY (2014) 16 NWLR (Pt. 1434) 482, the Court held that the term "public officer" is equated with public department and includes every officer or department invested with the performance of public duties. The Court also held that funds in the coffers of the Central Bank of Nigeria are in the custody or under the control of a public officer in its official capacity. See also Ibrahim v. JSC (1998) 14 NWLR (Pt. 584) 1 at 38, Central Bank of Nigeria v. Alh. Mohammed Kakuri (2016) LPELR - 41469 (CA), Central Bank of Nigeria v. Maiyini Century Company Ltd. & Anor. (2017) LPELR - 43024

The court highlighted the peculiar facts and circumstances removing the case from the purview of s.84 SCPA. Chief among them being the fact that:

i.) the AG was a party and was sued as a debtor in the case;
ii.) had admitted owing and participated in negotiations leading to the settlement on the final sum of the judgment debt; and
iii.) had made part payment of same.

These, in the opinion of the court, vitiated the neutrality of the AG, as demanded by justice, and the necessity of consent.[54]

Another exception to s.84 SCPA is when consent has been sought and the AG refuses same and is in contempt of an order of mandamus to grant the consent to commence

[54] The court was re-echoing the ratio decidendi of Ogunbiyi, JSC in the lead judgment of the court.

enforcement proceedings. This was noted recently by the Court of Appeal in the case of *CBN v. Tripple C. Acquisition & Ors* [55]:

> ***Section 84 of the Sherriff and Civil Process Act which the Appellant relies on to insist that the Respondent must first seek the consent of the Attorney General of the Federation before instituting the garnishee proceedings is not as strict and absolute as the Appellant erroneously argued it. It admits to exceptions; such as the case at hand where the Attorney General is in disobedience of a Court Order of mandamus to grant the Judgment Creditor the required consent to enforce the Judgment.*** *See CIL Risk Asset Management Ltd v. Ekiti State Govt. & Ors (2020) LPELR-4956 (CA).*

It is clear that even after the Supreme Court decision in *CBN v. Interstella Comm. Ltd*[56] it is not yet *uhuru* or *nunc dimittis* on the issue of the AG's consent under section 84 of the SCPA. As noted above, in view of conflicting Court of Appeal decisions from various divisions and debate amongst learned Counsel on the issue, the Supreme Court still has to make a final determination on the matter.

4.6 CONSTITUTIONALITY OF SECTION 84 SCPA

The constitutionality of section 84 of the SCPA has also been challenged. Its origin has been traced in *Onjewu v. K.S.M.CI.*[57] to the archaic common law principle that "the king can do no wrong" which is expressed in the Latin maxim, "*Rex non potest*

[55] (2022) LPELR-57441(CA) at Pp. 37-38 paras. D-D, Per Gafai, J.C.A
[56] *Supra*
[57](2003) 10 NWLR (Pt.827) 40 at p. 76, paras. A-H.; (2002) LPELR 5507 pp. 26 -33, paras. B-A, Per Muntaka-Coomassie, JCA

peccare". The principle sought to protect the King against enforcement of judgments in his own court. In 1958, the principle was fully made part of the law of Nigeria[58] even though the principle had been abolished in England by the promulgation of the Crown Proceedings Act, 1947. It was further affirmed to be part of Nigerian law by virtue of the Petition of Rights Act, Cap. 149 as amended in 1964.[59]

The rationale for the requirement of consent of the Attorney-General (AG) before judgment can be executed against the State was held to be a policy designed to prevent embarrassment to the government.[60] It is to ensure that moneys that have been voted by the House of Assembly of a State for a specific purpose in the Appropriation Bill presented to that House and approved in the budget for the year of appropriation does not end up being the subject of execution for other unapproved purposes under the Sheriffs and Civil Process Act.[61]

The Court in *Onjewu v. K.S.M.C.I.*[62] viewed section 84 of the Sheriffs and Civil Process Act as a condition precedent for bringing an action. [63] A necessary procedural safeguard needed by Government to avoid embarrassment and specifically held that it does not do violence to the provisions of section 287(3) of the 1999 Constitution.[64]

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[58] By virtue of section 45(1) of the Interpretation Act, Cap. 89, *Laws of the Federation of Nigeria*, and Lagos 1958.
[59] The Petition of Rights Ordinance was first passed by Ordinance No. 19 of 1915, which was subsequently amended and passed as Petition of Rights Act, Cap. 149, *Laws of the Federation of Nigeria, and Lagos*, 1958. The last amendment was in 1964. Section 3 of the Act provided that all claims in court against Government or any Government Department must be with the consent Governor-general or such other officer he may designate.
[60] *Onjewu v. KSMCI*, supra Per Muntaka-Coomassie, JCA this reason has been cited copiously by proponents of s.84. See *CBN v. Hydro Air Pty Ltd* (2014) 16 NWLR (Pt. 1434) 482 at 521 -522; See also Saulawa, JCA in *UCTH v. Lizikon* Nig. Ltd (2017) LPELR 42339 (CA) citing *Ode v. AG Benue State* (2011) LPELR 4774 (CA), per Kekere-Ekun, JCA (as he then was). The same reason was quoted by the Court of Appeal and Supreme Court in *CBN v Interstella Comm. Ltd, supra*.
[61] *Onjewu v. K.S.M.C.I*, s*upra* at pp. 88-89, paras. H-A. Per Muntaka-Coomassie, JCA.
[62] *Ibid.*
[63] See also *Madukolu v. Nkemdilim* (1962) SCNLR 341.
[64] Section 287(3) CFRN 1999 provides "*The decisions of the Federal High Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by*

With due respect I beg to differ from the position of his Lordship. In every action against government, the AG or a state counsel from the Ministry of Justice or relevant Ministry, Department or Agency of Government (MDA) being sued represents the government in court. This was confirmed in *FAAN v. Bi-Courtney Ltd* & Anor[65] -

> "*... the Attorney General is a proper party to be proceeded against in an action against the Federal Government and all or any of its agencies. By implication, the Federal Government and its agencies have their interests adequately represented by the Attorney General of the Federation being the Chief Law Officer of the Federation and Minister of Government of the Federation whose office was created by Section 150 of the Constitution of the Federal Republic of Nigeria 1999.*
>
> *... In the circumstance, it is my view that the Attorney General of the Federation being the Chief Law Officer is at all times responsible for conducting the case of the Federal Government and its agencies whenever their interest is in issue."*

It is the constitutional duty of the AG or his Officers to represent the Federal Government and its agencies in court proceedings. I believe, if followed, this serves

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other courts of law with subordinate jurisdiction to that of the Federal High Court, a High Court and those other courts, respectively."

[65] (2011) LPELR-19742(CA) at pp. 50-52 paras. E in Per Bada, J.C.A citing and the Supreme Court decisions in *Attorney General Kano vs. Attorney General Federation (2007) 6 NWLR part 1029 page 164 at 192; Attorney General, Anambra vs. Attorney General Federation (2007) 12 NWLR Part 1047 Page 4 at 47; and Ezomo vs. A. G. Bendel (1986) 4 NWLR Part 36 at Page 448.*

as adequate notice to the AG to avoid any embarrassment. Thus, if the original suit was diligently prosecuted from inception to final judgment there would be adequate notice prior to the award of a money judgment against the said MDA. Also, when payment of the judgment sum is demanded, in satisfaction of the judgment debt, notice is given. Therefore, if payment is demanded and still remains unsatisfied to the point necessitating enforcement through the instrumentality of garnishee proceedings[66] then there would be no need for an application for AG's consent which serves as a pre-action notice contemplated by his Lordship and other proponents of section 84.[67] Furthermore, sections 87 and 88 of the SCPA provide for the garnishee or third party an opportunity to appear and dispute liability or ownership of the debt that is subject of attachment proceedings. The court instead of making an order of execution shall order that any issue or question necessary for determining the liability of the garnishee shall be tried or determined or referred to a referee.[68] Similarly, where it is suggested by the garnishee that the debt sought to be attached belongs to a third party or that a third party has a lien or charge upon it, the court may order such third party to appear and state the nature and particulars of his claim upon the debt.[69] Where the third party does not appear the court may proceed to make an order as if such person had appeared.[70] Order 8 rules 6 and 8 of the JER also provide that in determining the question of liability of the garnishee, the judgment creditor, judgment debtor[71], garnishee or such other party would be heard before making an order for payment and cost or such other that may be just or made

[66] s. 83 SCPA provides that this fact be contained in the supporting affidavit to the *ex parte* application for an Order *Nisi*.
[67] It is unfortunate to note that some MDAs in Nigeria are notorious for not diligently prosecuting all their cases in court.
[68] s.87 SCPA
[69] s.88 SCPA
[70] s.89 SCPA
[71] Further evidence that the judgment debtor is a proper and necessary party of garnishee proceedings. See discussion on this issue in the subsequent chapter.

under section 87 of the SCPA.[72] These provisions[73], it is submitted, also avoid embarrassment, and provide adequate notice to the Attorney General.
In any case it has been held that MDAs:

> *… have monies that are always appropriated to them in their own budget to execute and run their own businesses and affairs. Such monies are no monies that require the consent of Attorney-General of the Federation before it could be spent or attached. It is part of the monies allocated to them to meet their financial obligations and to pay judgment debt as in this case.*[74]

Therefore, the public policy argument about monies allocated for a specific purpose may not hold water. Judgment debts are usually paid from a designated vote. And ample opportunity is provided in the law[75] for trial and determination of liability of the garnishee or any third-party lien or interests to be addressed.

The above justification notwithstanding, section 84 of the SCPA has been observed to be a relic of colonialism.[76] It has its roots in the Petition of Rights Act (PRA) which has been condemned as an anachronism in our statute books.[77] With the coming into force of the 1979 Constitution the Federal or State Government is liable

[72] Or. 8 rr. 6 and 8
[73] Are founded on the principles of fair hearing, equity, justice, and fair play.
[74] *CBN v. Tripple C. Acquisition Ltd & Ors* (2022) LPELR 57441 (CA) at pp. 25-35 paras. C, per Peter Olabisi Ige, JCA citing *Hajia Yinusa Bakari v. Deaconess (Mrs) Felicia Ogundipe & Ors* (2021) 5 NWLR (PART 1768) 1 at 36 E-H to 37 A-D, per Rhodes-Vivour, JSC
[75] Ss 87 – 89 SCPA and O. 8 rr. 6 -8 JER
[76] Babalola, A., *op. cit.*, pp. 118-119; Nwamara, T.A., *op. cit.*, pp. 249-250; *Ransome-Kuti v. A.G. Federation* (1985) 2 NWLR (Pt. 6) 211 at 236-237, SC; *Bakare v. A.G. Federation* (1990) 5 NWLR (Pt. 152) 516; and *Ezomo v. A.G. Bendel State* (1986) 4 NWLR (Pt. 36) 448 at 459.
[77] *Bakare v. A.G. Federation* (1990) 5 NWLR (Pt. 152) 516 at p. 546, paras. F-H, per Akpata, J.S.C.

to be sued, like any other individual, by any person aggrieved by its act without reference to the Petition of Rights Act.[78]

Thus, the requirement of consent under section 84 of the SCPA has been held to no longer stand by virtue of the combined effect of sections 1(3), 4(8), 6(6), 36(1), 287(3) and 315 of the 1999 Constitution.[79]

By the Supreme Court in *Bakare v. AG Fed.*[80] striking down the Petition of Rights Act as unconstitutional it is submitted that this by extension means that section 84 of the SCPA is unconstitutional as it is the legislative progeny of the PRA, and both share the same statutory DNA. It is curious that certain Justices and Divisions of the Court of Appeal in Nigeria have resisted the urge to purge this last vestige of its colonial past from its contemporary jurisprudence and statute books. Instead, they insist that the AG's consent is a condition precedent for exercise of jurisdiction to entertain garnishee proceedings. [81]

As if the controversy surrounding the applicability of section 84 was not enough the

[78] *Ezomo v. A.G. Bendel State* (1986) 4 NWLR (Pt. 36) 448 at p. 459, paras. G-H, per Aniagolu, J.S.C.
[79] *Betta Borix (Nig.) Ltd v. Ajaokuta Steel Coy. Ltd* [2004] Abj. L.R. 1 at p. 7, *per* Aladetoyinbo, J. and *El Shaddai International Ltd v. Federal Republic of Nigeria* (2002) FNLR 395 at pp. 401 - 402. *Ransome-Kuti v. A.G. Federation* (1985) 2 NWLR (Pt. 6) 211 at 236-237, SC; *Bakare v. A.G. Federation* (1990) 5 NWLR (Pt. 152) 516; and *Ezomo v. A.G. Bendel State* (1986) 4 NWLR (Pt. 36) 448 at 459. The Supreme Court of Nigeria recently held in *Central Bank of Nigeria v. Interstella Communications Limited & Ors* (2017) LPELR-43940 (SC) that where the Attorney-General is a party to the suit it is unnecessary to apply for consent.
[80] *Supra*
[81] See the cases of *Onjewu v. KSMCI; CBN v. Hydro Air Pty Ltd; and CBN v. Kakuri, Supra.*

Attorney General of the Federation (AG)[82] famously issued a circular[83] to Ministries, Departments and Agencies of Government (MDAs) not to pay any judgment debt upon service of a garnishee order absolute unless it is established that the consent of the AG had first been obtained in accordance with section 84 of the SCPA. The implication of this was that the AG was literally encouraging disobedience of court orders by arrogating to himself the power to review court orders before approving compliance with same.[84] Consent, it is submitted is a preliminary issue and should be raised before the order is made absolute. Besides as seen from the various decisions mentioned above starting from *Barclays Bank DCO v. Baderinwa (Re: LEDB)*[85], MDAs, which are not natural persons but artificial persons, do not qualify as public officers under the restrictive definition of the term in section 84[86]. Also, the requirement may be subject to abuse by the Attorney General who may unreasonably withhold such consent to prevent a judgment creditor from enforcing a valid and binding judgment against the Government or its agencies.[87] It is submitted that the Latin maxim "*nemo judex in causa sua*"[88] is applicable to the issue of the constitutionality and applicability of section 84 of the SCPA.

[82] Michael Aondoakaa, SAN. (AGF in Nigeria from July 2007- Feb.2010) The fate of the said circular remains uncertain. But I would surmise that same has lapsed with the removal and subsequent appointment of Attorneys General of the Federation since 2008 till date. However, it would appear many legal representatives of Garnishees, and indeed Judgment Debtors, are quick to file a preliminary objection, to jurisdiction of the court on grounds that the consent of the AG was not obtained before commencement of the garnishee proceedings, in response to service of a Garnishee Order *Nisi*. In the case of Mr. Aondoakaa's circular the aim was to control execution of judgment in respect of an Order Absolute rather than the commencement of the garnishee proceedings as is the discernible aim of the provisions of the SCPA. Very curious if you ask me.

[83] Ref. No. SGF/PS/CIR/625/I/143 dated December 23, 2008.

[84] This was to say the least absurd and a blatant abuse of office.

[85] *CBN v. Njemanze*, *supra et al* to *CBN v. Greenbay &* Ors (2022), *supra.*

[86] This position is supported by the simple reason that ***MDAs do not hold public office in the Federal or State public service*** as provided in s.84(3)(a) and (b) of the SCPA. MDAs are not the ***appropriate officer*** referred to for purposes of section 84 of the SCPA. The intendment of the Legislative draftsmen was "natural person" and not an artificial or juristic person created by law, as is the case with public corporations, firms, unions, associations, or such other organisation capable of suing and being sued in a court of law. (See previous section of this chapter on s. 84 SCPA).

[87] This point was noted by Akpata, J.S.C. in *Bakare's case supra,* at p. 546, paras. B-D.

[88] you cannot be a judge in your own case

4.7 CONCLUSION

Section 84 of the Sheriffs and Civil Process Act (SCPA) is indeed a very controversial provision. It has been the subject of conflicting Court of Appeal decisions and debate among legal scholars. It would appear there is no end in sight. I believe the matter will only be settled by either a definitive decision of the Supreme Court or Legislative Amendment of the SCPA, or both.

To ensure justice, fair play and of course "due process" and "rule of law" which have since become the mantra of the Government of the day as well as successive Governments[89], the Sheriffs and Civil Process Act[90] should be amended[91] to streamline it with modern trends and the democratic dispensation[92] in order to conform with the international best practice and enhance certainty in justice delivery and administration.[93]

[89] President Olusegun Obasanjo (1999- 2007) and President Umaru Musa Yar'Adua (2007 -2009) were popular for promoting "due process" and "rule of law" during their tenure. President Goodluck Jonathan (2009 -2015) was known for his "transformational policy" while President Muhammadu Buhari (2015 – date) is known for "zero tolerance for corruption."

[90] The SCPA was first enacted in June 1945 and has been re-enacted with little variation over the years. Thus, the Act has remained basically the same for over seventy-seven (77) years. Certain provisions are bound to have outlived their usefulness. Particularly, section 84 which, in view of the 1999 Constitution, has been said to be anachronistic and archaic. Perhaps an amendment by the Legislative arm of the Government is in order.

[91] On July 7, 2020, a bill, seeking to delete section 84 of the SCPA passed second reading at the House of Representatives. The proposed bill is titled, "Sheriffs and Civil Process (Amendment) Bill, 2020" and sponsored by the Chairman of the House Committee on Judiciary, Mr Onofiok Luke.

[92] "Executive lawlessness" and "defiant disobedience of the law" has been condemned by the highest court of the land (the Supreme Court) during the military regime. See *Military Gov. Lagos State & Ors v. Ojukwu* (1986) LPELR 3186 (SC) at p 12, paras A- C, per Eso, JSC and p. 30, para. C, per Oputa, JSC.

[93] Sir Edward Coke, Chief Judge of the Court of Common Pleas, colorfully stated regarding "rule of law" that all causes were *"to be measured by the golden and straight met-wand of the law as opposed to the uncertain and crooked cord of discretion*". See Institutes of the Lawes of England, Vol. 4, p. 41. (first published in stages btw. 1628 -1644). See also *Case of Prohibitions* [1607] EWHC J23 (KB).