

LENDING MORE INK TO THE CBN V. INTERSTELLA CONTROVERSY: A PRACTICAL RESOLUTION ©

Alexander A Wodi*

Abstract

Garnishment or garnishee proceedings is a mode of debt recovery or enforcement of judgment debt. The procedure involves wage garnishment or attachment of funds in custody of a third party, referred to as a garnishee. Depending on your jurisdiction (Nigeria, US, and UK), the debt may include spousal or child support, credit card debt, student loans, and money judgments delivered by a court of competent jurisdiction.

In Nigeria, section 84 of the Sheriff's and Civil Process Act (SCPA) requires the consent of the Attorney General (AG) to first be obtained before the commencement of garnishee proceedings for the attachment of money in the custody of a public officer. There are discordant opinions amongst lawyers and judges over whether the Central Bank of Nigeria (CBN) is a "public officer" within the context of section 84 SCPA to require the AG's consent in garnishee proceedings against the apex Bank?

On 15 December 2017 the Supreme Court decision in *CBN v. Interstella*¹ appeared to have settled the issue, but the controversy rages on with conflicting decisions and interpretations in subsequent Court of Appeal cases. I had earlier examined the issue, among other interesting issues arising from garnishee proceedings in my book, *Garnishment Law and Practice in Nigeria, UK, and US*. (2023). Recently, I re-read some of the conflicting decisions of the Court of Appeal (*CBN v. Ezeanya*, *CBN v. Hydro Air Pty*, *CBN v. Njemanze*, *CBN v. Zakari*, *CBN v. Lafferi*, *CBN v. Okon*, *CBN v. Kakuri*, *CBN v. Tivfa*, *CBN v. Adejoh*, *CBN v. Kruggerbrent*, *CBN v. Barbedos et al*). Weighing both sides of the arguments across the divide a few points reinforced my choice as to which side had a more convincing approach to settling the disceptation. I decided to lend more ink to the controversy in the hope of offering clarity and a practical resolution in this paper.

Key words: Garnishee Proceedings, Attorney General's Consent, Garnishee, Judgment Debtor, Public Officer, and *CBN v. Interstella*.

* LLM, JD/LLB, BL, CIPP/US, ACI Arb/UK, ICMC. Partner **Wodi and Wodi**, with a background in banking and commercial law, regulatory compliance, international law, and comparative law spanning over two decades. He may be contacted via email – aawodi21@yahoo.com, or alexwodi@wodiandwodi.com.

¹ (2017) LPELR 43940 (SC).

Table of Contents

1.0	The Smoking Gun That Was Not	1
1.1	<i>CBN v. Interstella</i> : The Much-awaited Apex Court Decision.....	5
1.2	The Unintended Aftermath	7
1.3	Janus-Faced Ratio Decidendi	14
2.0	The Three Stooges	16
2.1	Is money deposited with the CBN money deposited with a public officer or a banker?	17
2.2	Does money deposited with the CBN automatically translate into money “in the custody or under the control of a public officer in his official capacity” within the context section 84 SCPA?.....	20
3.0	<i>CBN v. Lafferi</i> : Some Luminous Flux.....	23
4.0	Remarque Finale	35
	Further Reading	36
	Book	36
	Cases.....	36
	Legislative Resources	36

1.0 The Smoking Gun That Was Not

It has been over half a decade since the 15 December 2017 Supreme Court (SC) decision in ***Central Bank of Nigeria v. Interstella Communications Ltd***,¹ the would-be *locus classicus* on section 84 of the Sheriffs and Civil Process Act (SCPA), yet there seems to be no end in sight regarding the conflicting decisions and interpretations emanating from different panels and judicial divisions of the Court of Appeal. This writer had waded into the fray via humble contributions in my book, [*Garnishment Law and Practice in Nigeria, UK, and US*](#).² The book had lauded the apex court for attempting to finally settle decades of uncertainty and controversy arising from section 84 SCPA requiring the Attorney General's (AG) consent being first sought and obtained before the commencement of garnishee proceedings for the attachment of money in the custody or under the control of a public officer in his official capacity. Even more *apropos* in respect of the CBN the concomitant question, "whether the CBN is a public officer within the context of section 84 SCPA?"

Section 84 of the Sheriffs and Civil Process Act³ is reproduced hereunder for ease of reference:

(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 custodia legis, the order nisi shall not be made under the provisions of the last preceding section unless 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 custodia legis, as the case may be.

(2) In such cases the order of notice must be served on such public officer or on the registrar of the court, as the case may be.

(3) In this section "appropriate officer" means: -

¹ (2018) 7 NWLR (Pt. 1618) 294; and (2017) LPELR 43940 (SC).

² Available in Kindle Edition (Dec. 2022) and on Amazon in Paperback & Hardcover (Feb. 2023); and in Paperback Barnes & Noble (May 2023). ISBN 9798987288306.

³ Cap S6 LFN 2004.

(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.

(b) in relation to money which is in the custody of a public officer who holds a public office in the public service of the State, the Attorney-General of the State.

Curiously section 84 SCPA does not specifically define a “public officer,” rather in defining the term “appropriate officer” it references “a public officer who holds a public office in the public service of the Federation or State.” We are left with the impression that the public officer referred to in section 84 is one who “holds office in the public service.” Some had interpreted this to mean only natural persons or human beings, while others interpret it to mean both natural and artificial persons. I am inclined to agree with the first interpretation but let us see what others think. Lawyers and Judges have placed dependence on other legislation and the Constitution in a bid to unravel this conundrum. Same are reproduced below.

Section 18(1) of the Interpretation Act⁴ provides that:

In an enactment the following expressions have the meanings hereby assigned to them respectively, that is to say –

“public officer” means 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

⁴ Cap I 23, LFN 2004.

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 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.

Section 18 (1) of the Interpretation Act defines “public officer” as a member of the public service of the Federation or State as defined by the 1999 CFRN. Section 318 of the 1999 CFRN on its part defines public service with reference to “service” as “a member or staff of” any of the listed bodies and institutions of the 3 arms (Executive, Legislature, Judiciary) of the Government including commissions, authorities, statutory corporations, companies, enterprises, and agencies established or funded by Government or in which Government owns controlling shares or interest as comprising the “public service of the Federation.”⁵ Both definitions are examples of maladroitness, to say the least.⁶

Prior to the SC decision in *CBN v. Interstella*⁷ the Court of Appeal in a number of cases⁸ had dealt extensively with the interpretation to be given to the term “public officer” and the interpretation to be deduced from a combined reading of section 18(1) of the Interpretation Act and section 318 of

⁵ Section 318 CFRN 1999 also provides a similar list in respect of its definition of “public service of a State.” See addendum at this paper’s end.

⁶ Draftsmen should eschew ambiguity and inelegance and strive for clarity and specificity in legislation. This is considered in more detail below.

⁷ (2017) LPELR 43940 (SC).

⁸ See *CBN v. Okojie* (2015) LPELR 24740 (CA), *CBN v. Ukpog* (2006) 13 NWLR (Pt. 998) 555, *CBN v. Interstella* (2015) 8 NWLR (Pt. 1462) 457, *CBN v. Okefe* (2015) LPELR 24825 (CA), *CBN v. Hydro Air Pty* (2014) 16 NWLR (Pt. 1434) 482, *CBN v. Njemanze* (2015) 4 NWLR (Pt. 1449) 279, and *CBN v. Kakuri* (2016). LPELR 41468 (CA).

the 1999 Constitution of the Federal Republic of Nigeria (CFRN) in relation to the question whether the CBN was a public officer or not within the context of section 84 SCPA. However, there was no consensus on the outcome of such exercise. One group reasoned that the CBN being an abstract and inanimate entity acts through its employees who are public officers and so a reference to the employee is a reference to it. While the other group insisted that the CBN acts as a banker to Government and to banks and therefore is not a public officer for purposes of section 84 SCPA. Based on these diametrically opposed reasons the conclusion was either that “the CBN is a public officer” or that “the CBN is not a public officer.” Thus, the confusion lingered.

In *CBN v. Kakuri*,⁹ Agim JCA in holding that the CBN is a public officer stated thus: -

The term "public officer" in the S.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 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. In the case of the appellant, it is established by statute as an institution of government. It is a bankers bank and banker to government, it custodies bank deposits and deposits from Government and its ministries, departments, parastatals, and agencies. It designates officers to carry out specific duties. It custodies the deposits and funds through officers assigned the specific task of handling the custody of such funds. So, the officers in its employment are its agent. By acting through its employees, it acts by itself (qui facit per alium facit per se). So, a reference to its employees in the discharge of the official duty, amounts to a reference to it. [Emphasis added].

In *CBN v. Njemanze*,¹⁰ Agbo JCA expressed a contrary view in holding that the CBN was not a public officer –

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

⁹ (2016) LPELR 41468 (CA) 24-27 [F-A].

¹⁰ (2015) 4 NWLR (Pt 1449) 276, 287-288.

it acts as a banker to the Federal Government in respect of credit balances in the accounts of the Federal Government 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. [Emphasis mine].

1.1 CBN v. Interstella: The Much-awaited Apex Court Decision

The facts of ***CBN v. Interstella Communications Ltd***¹¹ in sum are as follows:

In 2004 the 1st and 2nd respondents (Interstella Communications Ltd and Obi Barth Thompson) sued the Nigerian Telecommunications Ltd (NITEL) at the Federal High Court, Umuahia Judicial Division, in Suit No. FHC/UM/CS/95/2004, for breach of contract and damages therefrom. Judgment was delivered in favour of the 1st and 2nd respondents on 6th November 2007.

As at October 2008, the Judgment debt stood at over N23 Billion and \$48 Million. Consequently, an inter-ministerial Committee (which included the AGF) was set up by the Federal Government of Nigeria for an amicable settlement of the Judgment debt. The offer of N12 Billion was made to the judgment creditor by the Federal Government of Nigeria via its Judgment Debt Verification Committee vide the Federal Ministry of Justice letter Ref. No. MJ/LIT/ABJ/NSA/128/08/64 of 19th March 2009. The parties agreed on the sum of N12 Billion in full and final settlement and same was adopted as consent judgment of the Federal High Court 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. Consequently, the 1st and 2nd respondents instituted garnishee proceedings. The garnishee/appellant (CBN) failed to show cause, rather in conjunction with the 3rd and 4th respondents raised a preliminary objection to the procedure adopted by 1st and 2nd respondents in commencing the garnishee proceedings.

¹¹ *ibid*, 68 – 81 [D-C] (Ogunbiyi JSC); 124-126 [C-A] (Mary Peter-Odili JSC).

The objection was dismissed by the trial court and the order nisi was made absolute.

The appellant being dissatisfied with this lower court's decision, appealed to the Court of Appeal. In a unanimous decision on 9th May 2014, the appeal was dismissed, and judgment of trial court was affirmed. The Court of Appeal held that the appellant (CBN) is not a public officer and hence the AGF's consent as required under Section 84(1) of SCPA does not apply. It must be noted at this time, that the judgment debtors did not appeal against the original judgment.

The appellant dissatisfied with the concurrent findings on fact and law by the two lower courts further appealed to the Supreme Court.

Five issues were formulated for determination from the grounds of appeal, which include, inter alia, – 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.

The Supreme Court, in the lead Judgment delivered by Ogunbiyi JSC, dismissed the appeal and held that the CBN is not a “public officer” in the context of section 84 SCPA. The SC opined that by virtue of sections 2 (e) and 36 of the CBN Act the CBN acts as a banker and provides economic and financial advice to the Federal Government of Nigeria. Therefore, the relationship between the CBN and the Government was that of a banker and a customer: -

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.*¹²

In reaching its decision, the Court also noted the peculiar facts and circumstances of the case. Which are the Attorney General being a judgment debtor in the suit and an active participant in the several stages of negotiations, transactions and even part payment of the debt owed to the judgment creditor. The SC was of the view that in such circumstances it would be absurd and unjust to insist on the AG's consent being first obtained to commence the garnishee proceedings, since consent appears to have been given by implication. Justice would demand that the AG was a neutral/nominal party to come under the purview of section 84 of the SCPA.¹³

Regrettably *CBN v. Interstella* has not turned out to be the smoking gun in resolving the controversy surrounding section 84 of the Sheriffs and Civil Process Act, rather it has been ably described as part of the judicial officer's armoury, "*Judges and Justices have found dicta in the said case to support whatever decision they arrive at, pro and con!*"¹⁴ The decision has been used as justification for whatever position a panel of the Court of Appeal takes regarding the CBN and section 84 SCPA resulting in a spate of contradictory decisions and uncertainty on the law.

1.2 The Unintended Aftermath

After the SC decision in *CBN v. Interstella* there have been a myriad of Court of Appeal decisions, for and against the position that for purposes of section 84 SCPA the CBN is not viewed as a "public officer," rather the CBN is viewed as a banker and therefore the AG's consent is not required in respect of garnishee proceedings intended to attach money in custody of the CBN.

In holding that the CBN is not a public officer as contemplated by section 84 SCPA the Court of Appeal in *CBN v. Appah*¹⁵ opined thus:

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

¹² *CBN v. Interstella*, *ibid*, 79-81[C-C] (Ogunbiyi JSC).

¹³ *ibid* 76-77 [A-F] (Ogunbiyi JSC).

¹⁴ *CBN v. Laffer Nigeria Ltd* (2022) LPELR 59207 (CA) 25 [A-C] (Ogakuwu JCA).

¹⁵ (2020) LPELR 51214 (CA) 23-24 [E-D] (Hussain JCA).

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 Sheriffs 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).

The cases on the opposing side in holding that the CBN is a public officer in the context of section 84 SCPA rely on the provisions of section 18(1) of the Interpretation Act and section 318 of the 1999 CFRN as well as the Supreme Court's decision in *Ibrahim v. JSC*¹⁶ and *CBN v. Amao*.¹⁷ The Courts are swift in holding that the CBN being a statutory corporation is part of the public service and therefore a public officer within the ambit of section 84 SCPA.

The decision of Aliyu JCA in *CBN v. Enoch*¹⁸ is illustrative of this point:

"I only wish to add that the provisions of Section 84(1)(a) of the Sheriffs and Civil Process Act (SCPA) in relation to the Appellant have been subject to various and divergent interpretations from the decisions of this Court. The divergent views expressed in the numerous decisions is with regard to whether the Appellant is a public officer within the contemplation of the said provisions. In the case of CBN VS. NJEMANZE & ORS (2014) LPELR-24016 (CA), Agbo, JCA expressed the view that in view of the provisions of Section 2(e) read together with Sections 39 and 40 of the Central Bank Act, the Appellant is a banker of the Federal Government and therefore is not a public officer within the contemplation of Section 84 of the SCPA. This view is shared by Wambai, JCA when he held for this Court in the case of CBN VS. FALASH ENTERPRISES (NIG.) LTD (2017) LPELR-45415 (CA) that the Central Bank of Nigeria is not a public officer contemplated by Section 84 of the SCPA; which contemplates a natural not an artificial entity.

¹⁶ (1998) LPELR 1408 (SC).

¹⁷ (2010) 16 NWLR (Pt. 1219) 317.

¹⁸ (2022) LPELR 58804 (CA) 20-22 [A-A] (Aliyu JCA). See also *CBN v. Zakari* (2018) LPELR 44751 (CA).

His Lordship relied on the provisions of Section 18 of the Interpretation Act read together with Sections 318(1) of the Constitution of Nigeria, 1999 as amended and 2(e) of the CBN Act.

However, the more popular view is the one expressed in the lead judgment in this appeal to the effect that the Appellant is a public officer within the contemplation of Section 84 of the SCPA and therefore the prior consent of the Attorney General of the Federal is a condition precedent to the initiation of garnishee proceedings in respect of funds belonging to the Federal Government or any of its agencies domiciled or held by the Appellant. See CBN VS. OKEFE (2015) LPELR-55-58, CBN VS. KAKURI (2016) LPELR-41468 (CA), CBN VS. AMCON & ORS (2017) LPELR- 42986 (CA), CBN VS. AZORO & ORS (2018) LPELR-44389 (CA), CBN VS. ZAKARI (2018) LPELR-44751 (CA) and CBN VS. ACCESS BANK & ORS (2022) LPELR-57017 (CA).

In this appeal, I share the view expressed by my learned brother the lead judgment that the consent of the Attorney General of the Federation is needed as a condition precedent to the commencement of the garnishee proceedings against the funds of the judgment debtor in the hands of the Appellant. The reasons is because of the definition of 'public officer' expounded by the Supreme Court in the cases of IBRAHIM VS. JSC KADUNA STATE (1998) LPELR-1408 (SC) and CBN VS. AMAO (2010) 16 NWLR (PT. 1219) 317 at 303 where the ONNOGHEN JSC (as he then was, later CJN) held that the Central Bank of Nigeria is part and parcel of the public service of the Federation.

Interestingly Awotoye JCA in the lead judgment added this elucidation:

There is in my view, no justifiable reason why the term "public officer" should be defined to distinguish the individual holding the office from the office. What is significant in defining the term is who controls the money? It is immaterial whether it is the individual, or it is the corporation or institution, natural persons, or artificial persons. Provided he holds public office IN ANY CAPACITY. Also, a public officer was defined by the Supreme Court in IBRAHIM VS. JUDICIAL SERVICE COMMIT, KADUNA STATE & ANOR (1998) 14 NWLR PART 564 P. 1

to include artificial or natural person. One is more fortified in this view when one considers the fact that Section 318 (1) of the Constitution defines public service as service of the Federation IN ANY CAPACITY. Since no such consent was obtained before the ORDER NISI was granted by the lower Court it means the High Court lacks jurisdiction to so do: According to HUSSAINI JCA in CBN vs. AMCON & ORS (2017) ALL FWLR PART 900 page 422: "Obtaining the fiat of the Attorney-General is a condition precedent to the commencement of garnishee proceedings against a public officer without which the exercise of jurisdiction by the Court is averted. I daresay in this case on appeal, that the trial Court understood inception of garnishee proceedings leading to the order Nisi and culminating in the order made absolute at the Court below. I entirely agree with the above opinion of HUSSANINI JCA, and I also adopt it."¹⁹

It is important to note that the key words used in both sections²⁰ are “a member or staff.” The Court of Appeal in *CBN v. Enoch*²¹ misdirected itself when it focused on the phrase “in any capacity.” The phrase merely qualifies the capacity of the listed offices in the public service (as public bodies or institutions) different from the capacity a “member of staff” may hold office and render service²² in any of public offices mentioned in section 318 CFRN 1999. The learned Justice, Awotoye JCA seems to be equating “public service” with “public officer.” I am constrained to inquire whether the CBN is a member or staff of any of the public offices enumerated in section 318 (1)(a) - (h) of the 1999 CFRN. I think not! The CBN may be said to be a public office providing public service as a monetary authority and a bank to the Federation within the context of section 318 CFRN 1999

¹⁹ *ibid*, 11-16 [B-A].

²⁰ s 18 Interpretation Act and s 318 CFRN 1999.

²¹ (2022) LPELR 58804 (CA).

²² Hence the terms “Civil Servant” and “Public Servant” used to refer to Government workers who hold office in the various government ministries, departments, and agencies (MDAs) that form part of the Civil/Public Service. The phrase “in any capacity” qualifies and relates to the public offices or public institutions listed in section 318(1)(a)-(h) CFRN 1999 in definition of the term “public service of the Federation.” cf. “In his official capacity” as used in section 84 SCPA which qualifies the office of a public officer (a natural person) who holds office in the public service. Para 19 of the Fifth Schedule of the CFRN 1999 (on Code of Conduct for Public Officers) also defines “public officer” by providing in Part II of the Schedule a list of public offices occupied by natural persons (e.g. Members and Staff of Commissions, Councils ... Permanent Secretaries, Directors-General, and all other persons in the civil service of the Federation or of the State). No public institution or artificial person is mentioned in Part II. See Addendum below.

but as a statutory corporation²³ it is definitely separate and distinct from its members of staff who are public officers.

Let us consider section 318 CFRN 1999 more closely. Particularly the opening part of the section:

*‘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 ... (b) **member of staff** of the Supreme Court, ...*

Upon first reading it might be confusing but after a second or third go it becomes clearer. Ergo my earlier remarks on the drafting style. We notice that the word “service” is used twice. However, the use case at each instance is different.²⁴ The “service of” the Federation refers to the public offices listed in 318(1)(a)-(h), while “service as” is used to refer the “members or staff” of the public offices or institutions listed in the section. Agreed, each public office or institution is comprised of members of staff who are “public officers,” but it goes against logic to say the institution is a public officer as used in section 84 SCPA.

Mukhtar, CJN in the case of *A. G. Federation v. Lagos State*²⁵ enunciated that:

*It is a settled principle of interpretation that provisions in **statutes must be given their simple and direct meaning**, which construes and give the statute its legal meaning. **In the process of doing so, the intention of the legislature must be explored and taken into consideration but will not be to the extent of bringing into the provision a different complexion from what was intended by the legislature.** In this wise, the Court should confine itself to the plain and unambiguous meaning of the words used. [Emphasis mine].*

The rule of interpretation of statutes is that where the words of a statute are plain, clear, and unambiguous, the words must be given their natural and ordinary meaning.

In the case of *CBN v. Ezeanya*²⁶ the Court of Appeal observed and held thus –

²³ See s 1 CBN Act and s 318(1)(e) CFRN 1999.

²⁴ This is where our elementary school grammar lessons on prepositions, nouns, verbs etcetera will come in handy.

²⁵ (2013) 16 NWLR (Pt. 1380) 249, 317.

²⁶ (2022) LPELR 57598 (CA) 21-28 [B] (Bola JCA).

*Section 318 of the Constitution 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 *CBN v. Njemanze*²⁷ the Court of Appeal also in its consideration of section 318 of the 1999 CFRN 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 in *CBN v. Njemanze* 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.***²⁸

In *CBN v. Doma*²⁹ the Court of Appeal held 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. That is to say, the consent of the Attorney General is not necessary in this case because the Central Bank of

²⁷ (2015) 4 NWLR (Pt 1449) 276 (Agbo JCA).

²⁸ *ibid.*

²⁹ (2018) LPELR 45639 (CA) 11-28.

Nigeria is not a public officer as contemplated by Section 84 of the Sheriffs and Civil Act.

In *CBN v. Maggpiy Trading TFZE & Ors*³⁰ the Court of Appeal considered section 18 of the Interpretation Act and section 318 CFRN 1999 and held that –

The term, "public officer" has been defined in Section 18(1) of the Interpretation Act as; "a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria 1999 or of the Public Service of a State". Public Service of the Federation has been defined in Section 318(1) of the said Constitution as; service of the Federation in any capacity in respect of the Federal Government of Nigeria and includes service as enumerated in paragraphs (a)-(h) of the said Section 318(1) of the Constitution. Of particular relevance to this case, is paragraph (e) which includes, staff of any statutory corporation established by an act of the National Assembly. Now, it is not in doubt that, the Central Bank of Nigeria is a body corporate, which can sue and be sued in its corporate name. It is created by the Central Bank of Nigeria (Establishment) Act of 2007. Thus, all employees of the Bank are public officers within the contemplation of Section 318(1) of the 1999 Constitution. See Sharika & Sons Ltd. v. The Government of Kaduna State & Ors. (2013) LPELR-20329 (CA) and CBN v. Njemanze (2015) 4 NWLR (Pt. 1449) 279. That being so, while these corporate bodies which are created by law provide public services, persons who hold offices in such institutions or corporate bodies are "public officers". Thus, Section 84 of the Sheriffs and Civil Process Act envisages natural persons who hold offices in such public institutions or corporations either of the Federation or of a State. Accordingly, a corporate or statutory body such as the Central Bank of Nigeria (CBN) does not qualify as such public officer within the ambit of Section 84 of the Sheriffs & Civil Process Act. Thus, in CBN v. Interstella Communication Ltd. (2015) 8 NWLR (Pt. 1462) 456 at 505 paras C-D, Abba Aji, JCA (as he then was) held that: "Section 84 of the Sheriffs and Civil Process Act refers to a Public Officer as a holder, officer or person holding a public office. The term public

³⁰ (2022) LPELR 57531 (CA) 19-25 [D-D] (Tsammani JCA).

officer is also defined to only relate to the holders of the offices as reflected only in Section 318(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ..." On appeal before the Supreme Court as *CBN v. Interstella Communications Ltd. & Ors.* (2018) 7 NWLR (Pt. 1618) 249; (2017) LPELR-43940 (SC), the Supreme Court per Ogunbiyi, JSC held as follows: "...In the case under consideration, I have ruled that the relationship between the Appellant and the 3rd and 4th Respondents is that of Banker and Customer relationship. [Emphasis added].

We align ourselves with the position of the law as stated by the jurists in the above-mentioned cases (*CBN v. Ezeanya*, *CBN v. Njemanze*, *CBN v. Doma*, and *CBN v. Maggpiy*).

1.3 Janus-Faced Ratio Decidendi

Lawyers and Judges have also been wont to pick and choose between the reasons given by the SC in *CBN v. Interstella* for deciding the claim before it, *the ratio decidendi*. As stated earlier the court in holding that the CBN is a not a public officer in the context of section 84 SCPA based its decision on the following reasons:

1. The fact that the CBN by virtue of sections 2(e) and 36 acts a banker to the Government; and stands in a banker - customer relationship with Government and
2. The peculiar facts and circumstances of the case, i.e., the AG being one of the judgment debtors, participating in the negotiated settlement, and part payment of the judgment debt.

The above constitute the *ratio decidendi* of the case. The reason given by the Court in determining the issues in dispute between the parties and the claim before it. Both *rationes decidendi* identified in *CBN v. Interstella* complement each other and are not mutually exclusive or interchangeable. It is the prerogative of a court to give a single or manifold reasons for its judgment. In the event that the court gives two or more reasons, all such reasons (*rationes decidendi*) are equally valid, and none should be regarded as or reduced to *obiter dictum* merely because other reasons have been

given.³¹ The lower court has no right to decide which ratio to follow or view one as superior to the other and elect to downgrade the less popular *ratio* to *obiter*.³²

The *ratio decidendi* is the reason for the decision reached, while *obiter dictum* is something said in passing. Augie JSC in *Ogbaru LG v. Ifeakor & Ors*³³ put it succinctly:

"There are two constituent parts in a judgment; there is ratio decidendi [reason for deciding], and obiter dictum [something said in passing] - Black's Law Dictionary, 9th Ed. An opinion of the Court upon which no issue had been joined by the Parties amounts to obiter dictum, and ratio decidendi is the principle upon which its decision is founded.

In *Amobi v. Nzegwu*,³⁴ Kekere-Ekun JSC also held as follows:

The ratio decidendi means "the reason for deciding" or the reasoning, principle, or ground upon which a case is decided. The legal principle formulated by the Court, which is necessary in the determination of the issues raised in the case, in other words, the binding part of the decision is its ratio decidendi as against the remaining parts of the judgment which merely constitute Obiter dicta.

In the case of *CBN v. Interstella* the ratio that the peculiar facts and circumstances led to Court to dispense with the requirement of AG's consent does not diminish the ratio that the CBN by virtue of the CBN Act is a banker to the Federal Government, standing in a banker customer relationship with same and therefore the CBN is not a "public officer" in the context of section 84 SCPA to require the Attorney General's consent before instituting garnishee proceedings. The Supreme Court clearly decided that the CBN is not a public officer in respect of funds in its custody and control deposited into accounts kept on behalf of its customers (Government and other banks). That plain and firm reason removed the CBN from the ambit of section 84 of the Sheriffs and Civil Process Act.

³¹ *Aeroflot Soviet Airlines v. UBA Ltd* (1986) 3 NWLR (Pt 27) 188, 199 [D-E] (Karibi-Whyte JSC).

³² *CBN v. Lafferi*, *ibid.*

³³ (2023) LPELR 60155 (SC) 7-8 [E-F]. See also *Olurin & Ors v. Sangolana & Ors* (2021) LPELR 56280 (CA) 23-24 [E-A] (Ojo JCA).

³⁴ (2014) 2 NWLR (Pt. 1392) 510, 549 [A-C].

2.0 The Three Stooges

Three recent cases of note that are contrary to the view that the CBN is not a public officer in the context of section 84 SCPA are **CBN v. Okon** (2023) LPELR 59737 (CA) {*coram* Agbo, Aliyu, and Omoleye, JJCA}, **CBN v. Tivfa** (2023) LPELR-60851(CA) {*coram* Danjuma, Georgewill, and Jauro, JJCA} and **CBN v Adejoh** (2023) LPELR 61118 (CA) {*coram* Mustapha, Waziri, and Abundaga, JJCA} decided in January 2023, May 2023, and September 2023 respectively. The cases had followed the litany of cases in the opposing rank to hold that the CBN is a public officer for purposes of section 84 SCPA (*Ibrahim v. JSC*, *FGN v. Zebra Energy*, *CBN v. Kakuri*, *CBN v Hydro Air Pty*, *CBN v. Foluso*, *CBN v. Zakari*, *CBN v. OKojie*, *CBN v. Amao*, *CBN v. Okefe*, *CBN v. Ukpong*; *CBN v Aprimpex*, *CBN v. Mogbo et al*).³⁵ All three cases are in agreement that the CBN is a public officer and cite *CBN v. Interstella* in support of their position. Calling to aid the provisions of section 18(1) of the Interpretation Act and section 318 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) to define the term “public officer” to include individual staff of Government bodies and institutions, as well as public departments and institutions [i.e., Government Ministries, Departments and Agencies (MDAs)].

This writer is not disputing the fact that in certain instances³⁶ the CBN may indeed be viewed as a “public officer,” however not in garnishee proceedings. This is so for the simple fact that the CBN does not “hold public office in the Federal or State public service” as contemplated in section 84(3) SCPA. Furthermore, the CBN does not hold funds in its custody or under its control “as a public officer in its official capacity,” rather the CBN holds funds in its custody in its official capacity “as a banker” to Government and banks by virtue of the provisions of its enabling law, the CBN Act.³⁷ The term “official capacity” is not defined in section 84 SCPA however it may simply be defined in reference to a job description or responsibilities. In the case of a public officer, it would relate to a public office or position held in a public institution. For example, if a public officer is sued in his official capacity, it means the suit is brought “under the color and by virtue of his office.” The focus of section 84 is “natural persons” and not “artificial persons.”³⁸ Thus, corporate bodies or

³⁵ Citations are contained in the 3 related cases.

³⁶ s 2(a) Public Officers Protection Act (POPA) which operates to protect and limit the timeframe for commencing action against “any person” acting under a Law, public duty, or authority to within three months. The term “any person” under POPA have been held to include natural and artificial persons (including CBN).

³⁷ ss 2(e) 27, 36 and 39 CBN Act.

³⁸ *CBN v. Njemanze*, *ibid*; and *CBN v. Doma*, *ibid*.

public institutions (MDAs) are exempt from its applicability and the necessity of first obtaining the AG's consent as a condition precedent for commencing the said garnishee proceedings in the restricted and peculiar circumstances of section 84 SCPA. This point appears to be lost on the learned Justices of the Court of Appeal who insist on a rigid and convoluted interpretation of section 84 SCPA and the Supreme Court decision in *CBN v. Interstella*. The SC has been misinterpreted and even distinguished from other cases by an insistence that the fact that the AG was a party in the suit was the key factor that obviated the requirement for consent under section 84 SCPA.³⁹ With due respect the primary focus in interpreting section 84 SCPA should be the "garnishee." The court should restrict itself to the ensuing questions:

- 1.) whether the money is in the custody of a public officer as contemplated by the section?
- 2.) If the answer is in the affirmative, then the court should inquire as to whether the consent of the AG has been obtained? If the answer is negative, then consent is unnecessary.

The answer to the second question would determine whether the court is cloaked with the requisite jurisdiction to competently adjudicate over the matter.

Presented another way, let us essay the following questions:

1. Is money deposited with the CBN money deposited with a public officer or a banker?
2. Does money deposited with the CBN automatically translate into money "in the custody or under the control of a public officer in his official capacity" within the context of section 84 SCPA?

2.1 Is money deposited with the CBN money deposited with a public officer or a banker?

I shall answer question one by reiterating that such deposit is received by the CBN by virtue of its statutory role as a banker to Government and a banker to banks.⁴⁰ Therefore, the said funds are not in its custody or control in its official capacity as a public officer. The CBN in such instances performs a "banking service," as a public institution. So, bringing the CBN within the purview of section 18(1) of the Interpretation Act and section 318 of the 1999 CFRN to designate it as a

³⁹ see *CBN v. Osonoki & Ors* (2022) LPELR 57210 (CA) 9-12 [F] Owoade JCA; and *CBN v. Tripple C Acquisition & Ors* (2022) LPELR 57441 (CA) 37-38 [D-D] Gafai JCA).

⁴⁰ ss 27, 36, 39 and 41 CBN Act.

“public officer” would be stretching the provisions too far and too thin to arrive at a biased and preconceived answer that fails to thoroughly address the question.

The Central Bank of Nigeria is a unique creature of statute. It is a statutory corporation that primarily functions as a bank. However, it has more bells and whistles than regular banks. The distinguishing features from other banks is its independence, ownership, management, staffing, monetary and regulatory powers.⁴¹ The CBN is a body corporate with perpetual succession, a common seal, the right to sue and be sued in its corporate name and shall be an independent body in the discharge of its powers and functions under the BOFI and CBN Acts.⁴² It is 100% owned by the Federal Government.⁴³ Its board is comprised of political appointees (the Governor, 4 Deputy Governors and 5 directors), the permanent secretary of the Federal Ministry of Finance, and the Accountant general of the Federation.⁴⁴ The officers and other employees of the Bank shall be appointed on such terms and conditions approved by the board.⁴⁵ It is important to note the last point that the officers of the CBN are public officers.⁴⁶ The CBN shall act as banker to the Federal Government, States and Local Governments, and banker to funds, institutions, and corporations (MDAs) established by Federal, State and Local Governments and banker to other banks.⁴⁷ As a bank the CBN carries out banking operations, and credit operations to its customers.⁴⁸ As banker to Government the CBN undertakes treasury operations by way of purchase, sale, discount or rediscounting of treasury bills, gold coins or bullion, bonds, promissory notes, foreign currency and invest in government securities or securities issued by international financial institutions.⁴⁹ The CBN shall in pursuance of its mandate to maintaining monetary stability in the economy of the country have the power to issue securities, treasury bills and carry out open market operations for the purposes of liquidity management.⁵⁰

The Banks and Other Financial Institutions Act (BOFIA) also gives the CBN certain powers and functions in the discharge of its role as regulator of banks and other financial institutions. These

⁴¹ *CBN v. Ukpong* (2006) 13 NWLR (Pt. 998) 555, 571. See also *CBN v. Zakari* (2018) LPELR 44751 (CA).

⁴² CBN Act, s 1(3).

⁴³ *ibid*, s 4.

⁴⁴ *ibid*, s 6.

⁴⁵ *ibid*, ss 7 and 14; Schedule 1 para 2(7)(f).

⁴⁶ *ibid*, see interpretation section 60. We shall get back to this point later.

⁴⁷ *ibid*, ss 27, 36, 39 and 41.

⁴⁸ *ibid*, ss 27, 29 and 36.

⁴⁹ s 28.

⁵⁰ ss 2(a) and 30 CBN Act.

includes the power to license, supervise the operation and revoke the license of banks and other financial institution (OFIs). The CBN also has the power to conduct routine and special examinations of banks and OFIs, sanction erring banks, bank directors and bank officials by way of suspension of banking license, imposition of fines, removal of directors, and blacklisting of bank officials. The CBN can also intervene to manage failing banks by injecting liquidity, appointment of an interim management board, resolution of eligible bank assets and establishment of a resolution cost fund in conjunction with AMCON, facilitating and/or approving restructuring, mergers, acquisition, or take-over arrangements, issuance of promissory notes for payment of deposit liability in the event of bank failure, creation of bridge banks, and resolution of failed banks in collaboration with the NDIC, or via other resolution mechanisms provided in the law.⁵¹

From the foregoing it is submitted that the intention of the CBN Act and other relevant laws stated above was to create an independent Government bank charged with monetary and regulatory responsibilities to the government, banks and other financial institutions operating in the financial services sector. As a corporate body the CBN can sue and be sued in its name as a *persona juridica* (legal person or entity). The CBN is also autonomous and independent in the discharge of its functions and exercises of its powers (but a few being subject to approval of the President – e.g., currency redesign or re-denomination. The origin of this may not be unconnected with the fact that the president is the equivalent of a sovereign under international law and historically currency notes and coins were minted as symbols of the sovereign⁵² and his authority).

Thus, the CBN’s *raison d’etre*, its primary purpose for existing, is to function as a banker to Government and other banks. The Court of Appeal in *CBN v. Okojie*⁵³ held that –

... 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 ...

⁵¹ see ss 1, 5, 7, 12, 32, 33, 34 - 42, 47, 48, 49, 50, 64, 67, 74, 78, 87, 102, 115 BOFI Act, ss 4, 5, 6, 8, 24, 25, 34, 60A, and 60B AMCON Act, and ss 4, 51, 52, 53, 54, 55, and 57 NDIC Act.

⁵² Jan van der Crabben, “Coinage” (*World History Encyclopedia*, 28 April 2011) <<https://www.worldhistory.org/coinage/>> accessed 14 January 2023.

⁵³ (2006) 13 NWLR (Pt 998) 555 (Fabiya JCA). See also *CBN v. Nwawka & Ors* (2012) LPELR 22383 (CA) 15-17 [E-D] (Orji-Abadua JCA).

Its principal objects as contained in section 2 of the CBN Act attests to this fact. The traditional functions of a central bank include, monetary policy, management of external reserves, issuance of legal tender, oversee the banking system, promote financial system stability, and act as lender of last resort.⁵⁴ Section 2 of the CBN Act is not far from these. Subsections 2 (a) to (d) focus on its monetary and regulatory functions, while subsection 2 (e) specifically provides that the CBN shall act as, “banker and provide economic and financial advice to the Federal Government.”

2.2 Does money deposited with the CBN automatically translate into money “in the custody or under the control of a public officer in his official capacity” within the context section 84 SCPA?

Again, I choose to answer the above question in the negative. As noted above by virtue of section 1 of the CBN Act the CBN is an independent body, a corporate body recognised by law with perpetual succession, a common seal, and may sue and be sued in its corporate name.

What is relevant here for our purposes is the CBN’s power and right “to sue and be sued in its name.” It should be noted that section 84 of the SCPA relates to conditions precedent for commencement of garnishee proceedings. In other words, “the right to sue.” This crucial point should not be forgotten by entrants into the controversy trailing section 84 SCPA and the SC decision in *CBN v. Interstella*. When a judgment creditor decides to sue the CBN as a garnishee in garnishee proceedings involving a judgment debtor (Government or bank), the decision is not informed by the fact that the CBN is a “public officer” rather it is because the CBN is seen as and functions as a bank/banker to Government or bank (i.e., the judgment debtor). This recognition flows naturally from its being a legal person by virtue of section 1 of the CBN Act. The CBN is viewed in law as a separate and distinct person from the CBN Governor, Deputy Governors, Directors and all the officers and other employees of the CBN. This is the law. The CBN may act through human agents (who may include public officers/Independent contractors), but such natural persons are different from the artificial person of the CBN as created and recognised by its enabling law.⁵⁵ This principle of separate legal personality, that is the separation of corporate bodies from

⁵⁴ Reem Heakal, “What Central Banks Do” (*Investopedia*, updated 25 July 2023) <<https://www.investopedia.com/articles/03/050703.asp>> accessed 24 January 2024

⁵⁵ ss 1, 2, 7, 14, 27, 36, 39 and 41; Schedule 1 para 2(7)(f) CBN Act.

its officers is well grounded in company law.⁵⁶ A company has a legal personality separate and independent from the identity of its shareholders, who have limited liability to the extent of their capital contributions. The exception of lifting the veil of incorporation to know the directors or shareholders of the company only arises in instances of (a) agency, (b) fraud, (c) façade or sham, (d) group enterprise, and (e) injustice or unfairness.⁵⁷

It would therefore be absurd to say that by depositing money with the CBN such money have automatically been deposited with its officers. Likewise, it cannot be said that depositing money with a commercial bank automatically translates to depositing money with the bank teller or bank manager. That would be absurd. The bank and not its officials are liable for all deposits by its customers. The deposit creates a banker - customer relationship between the bank and its customer. The bank becomes a debtor in respect of the deposit which is payable upon demand by the customer. Failure to comply with the customer's demand or instructions activates a right to sue for such debt which is **a debt due and accruable**. In garnishee proceedings the crucial tests for determining whether a debt is due or accruing and thus attachable, are whether the amount is certain, and the customer/judgment debtor **has a vested immediate legal right to the money**. The judgment debtor (bank's customer) must be able to sue to recover the debt from the garnishee (in our example the bank).⁵⁸ It is therefore submitted that a Government or bank (judgment debtor) can only sue the CBN to recover its money deposited with CBN by virtue of an existing banker-customer relationship. The Government or bank (judgment debtor) cannot sue the officers of the CBN in respect of such deposits. This is purely because of the principle of separate legal personality mentioned above.

The absurdity would even be going further if we say an action instituted against the CBN automatically translates into a lawsuit against officers of the CBN simply because the CBN acts through natural persons who happen to be "public officers." Yet again, we shall run into the problem of not properly distinguishing the CBN, as a legal personality that "can sue and be sued," from its officials. That is the absurdity in the insistence on the CBN being a "public officer," including its officers and employees, by virtue of a combined reading of section 18(1) of the

⁵⁶ *Salomon v. Salomon* (1897) AC 22.

⁵⁷ *Marina Nominees Ltd v. FBIR* (1986) LPELR 1839 (SC) 16 [D-G] (Kazeem JSC); and *Oboh & Anor v. Nigeria Football League Ltd & Ors* (2022) LPELR 56867 (SC) 45-51 [E-B]; 54-56 [B-D] (Peter-Odili JSC).

⁵⁸ See sections 83 and 85 SCPA; *Webb v. Stenton* (1883) 11 QBD 518; and *UBA v. SAS & Ors* (2015) LPELR 40394 (CA).

Interpretation Act and section 318 of the 1999 CFRN as posited by the proponents of that position.⁵⁹ This to say the least is propelled by sheer mischief and antics often employed by learned counsel to delay a suit or avoid liability under a suit. Quite akin to the proposition that a judgment debtor is not a proper party in garnishee proceedings.⁶⁰ An anathema to reason, equity and good conscience described as heresy in *Nigerian Breweries Plc v. Chief Worhi Dumuje & Anor*⁶¹ when the court stated –

It would certainly amount to sheer heresy to deny the judgment debtor the right to be heard in such a situation on the ground that he is not a party to garnishee proceedings."

Interesting choice of words employed by the Bench. The same fascinating language is utilized in the *CBN v. Lafferi*⁶² case below in addressing the conundrum on the status of the CBN within the context of section 84 of the SCPA.

I must point out that to my mind section 84 SCPA may only apply if the officials of the CBN are joined in a garnishee proceeding. The reason being that such official may be “a public officer in the custody and control of money in his official capacity.” The officials of CBN being natural persons may be subject to the provisions of section 84 SCPA. There is however, a two-prong test/precondition that must be satisfied, viz: (i) such party must be a public officer, and (ii) be in custody or control of the money in his official capacity. From my petite knowledge of the CBN governance structure and operations I submit that only Six persons/positions may easily qualify and pass this test. They are the Governor, CBN; Deputy Governor, Operations; Director, Banking Operations; Director, Payments Department; and the Branch Controllers of the 36 Branches. The CBN Governors and Deputy Governors may be political appointees appointed by the President and confirmed by the Senate but being members of the board of CBN, a Statutory Corporation, they qualify as “public officers” as defined in Para 19 and Part II of the Fifth Schedule of the CFRN 1999.⁶³

⁵⁹ This point, *inter alia*, is explored in greater detail and with cerebral dexterity in the next section by one more erudite than I.

⁶⁰ Another of the many issues addressed in my book, A Wodi, *ibid*, 149 -158.

⁶¹ (2015) LPELR 25583 (CA) 115-121. [D-B] (Ugochukwu Anthony Ogakwu JCA).

⁶² *ibid*.

⁶³ ss 6, 8, and 10 CBN Act; and Fifth Schedule Part I, para 19 and Part II, para 14 CFRN 1999.

3.0 CBN v. Lafferi: Some Luminous Flux

That said I shall now turn to the judgement of the Court of Appeal in ***Central Bank of Nigeria v. Lafferi Nigeria Limited & Ors*** (2022) LPELR 59207(CA) {coram Gafai, Williams-Dawodu, and Ogakwu, JJCA}. The lead judgment was delivered by an erudite jurist whose majesty of intellect and elegant communication I believe beams a more convincing light on the matter.

The brief fact of the case are as follows:

The provenance of this matter was the demolition of the 1st Respondent's property by the 2nd-4th Respondents (Hon. Minister Of Federal Capital Territory; Federal Capital Territory Development Authority (FCDA); and Development Control Department, FCDA). Piqued by the said demolition, the 1st Respondent instituted proceedings before the High Court of the Federal Capital Territory, Abuja in Suit No. FCT/HC/CV/945/2011. The matter was contested and on 14th November 2012, the lower Court, Coram Judice: Talba, J. (as he then was) dismissed the 1st Respondent's case. Peeved by the said decision, the 1st Respondent appealed to the Court of Appeal in Appeal No. CA/A/185/2014. In the judgment of this Court delivered on 6 February 2018 (Coram: Yahaya, Hassan and Mustapha, JJCA) the decision of the lower Court was set aside, and judgment was entered in favour of the 1st Respondent in the sum of ₦450million being the value of the demolished property.

In a bid to actualise the judgment and reap the fruits of the judgment and in keeping with the stipulations of Section 287 (2) of the 1999 Constitution which provides that "the decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by Courts with subordinate jurisdiction to that of the Court of Appeal"; the 1st Respondent commenced garnishee proceedings before the High Court of the Federal Capital Territory, Abuja. A garnishee order nisi was made for the attachment of the funds of the 2nd-4th Respondents with the Appellant (Central Bank of Nigeria). The Appellant filed an affidavit showing cause why the order nisi should not be made absolute.

It further filed a preliminary objection challenging the jurisdiction of the lower Court to entertain the garnishee proceedings.

The High Court took the preliminary objection alongside the application to make the order nisi absolute, dismissed the preliminary objection and made the garnishee order absolute for the sum of N194.1million which the Appellant disclosed as the funds of the 2nd-4th Respondents that was in its custody.

The Appellant was dissatisfied with the decision of the High Court and appealed against the same.

A number of issues (jurisdiction of the Federal High Court and State High Courts; interpretation of the terms “banker customer relationship,” and “public officer,” and AG’s consent under section 84 SCPA) were considered by the appellate court in arriving at its decision, but chief amongst them and for our purpose was -

Whether the Central Bank of Nigeria is a public officer within the meaning of Section 84 of the Sheriffs and Civil Process Act as to require the consent of the Attorney-General of the Federation before garnishee proceedings can be commenced against it?

In determining the issue, Ogakwu JCA delivering the lead judgment of the Court of Appeal eloquently asseverated, and held thus:

The disceptation under this issue is not convoluted. It is simple and straightforward. However, its simplicity has not made it any less a thorny and contentious issue. At the core of the contention is Section 84 of the Sheriffs and Civil Process Act. It provides as follows in Section 84 (1) and (3):

84 (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 custodia legis, the order nisi shall not be made under the provisions of the last preceding section unless 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 custodia legis, as the case may be.

(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;

(b) in relation to money which is in the custody of a public officer who holds a public office in the public service of the State, the Attorney-General of the State.

The pith of this provision and indeed the crux of this second issue is whether the Appellant is a public officer, necessitating that the consent of the appropriate officer, the Attorney-General, be obtained before garnishee proceedings can be commenced against it. Sadly, this Court has not taken a common front in this regard. There is a large welter of decisions of this Court which has held that the Appellant is a public officer and that the consent of the Attorney-General is a pre-requisite to garnishee proceedings being commenced against it. The Appellant has relied on some of these cases. See also including, but not limited to CBN vs. OKEFE (2015) LPELR (24825) 1, CBN vs. HYDRO AIR LTD (2014) 16 NWLR (PT 1434) 482, CBN vs. J. I. NWANYANWU & SONS ENTS LTD (2014) LPELR (22745) 1, CBN vs. S. C. S. B. V. (No. 1) (2015) 11 NWLR (PT 1469) 130 at 155, CBN vs. MAIYINI CENTURY CO. LTD (2017) LPELR (43024) 1, CBN vs. KAKURI (supra), CBN vs. ZAKARI (supra), CBN vs. ATANA (2019) LPELR (49194) 1 at 6-10, CBN vs. OSCO PETROLEUM LTD (2018) LPELR (49878) 1, CBN vs. OSONOKI (2022) LPELR (57210) 1, CBN vs. ANWAN (2021) LPELR (56075) 1 at 10-13 and CBN vs. ENOCH (supra).

Au contraire, there exists the line of decisions of this Court where it has been held that the Central Bank of Nigeria is not a public officer within the meaning of Section 84 of the Sheriffs and Civil Process Act and therefore there is no need to obtain the consent of the Attorney-General to commence garnishee proceedings against it. The learned counsel for the 1st Respondent has referred to some of these cases. Other decisions along this line of thought include but not limited to SHARIKA & SONS LTD vs. THE GOVT OF KADUNA STATE (2013) LPELR (20329) 1, CBN

vs. NJEMANZE (2015) 4 NWLR (PT 1449) 279, CBN vs. FALASH ENTS NIG LTD (2017) LPELR (45415) 1, CBN vs. ZENITH BANK PLC (2019) LPELR (48383) 1 at 8-11, CBN vs. APPAH (2020) LPELR (51214) 1 at 9-23, CBN vs. LIDAN ENGINEERING LTD (2021) LPELR (52622) 1, CBN vs. UMAR (2021) LPELR (55565) 1, ECOBANK vs. ADMIRAL ENVIRONMENTAL CARE LTD (2021) LPELR (56130) 1, CBN vs. OKECHUKWU (2021) LPELR (58344) 1, CBN vs. EZEANYA (*supra*) and CBN vs. KRUGGERBRENT & CO (NIG) LTD (2022) LPELR (57571) 1 at 34-39.

*What would have been the icebreaker in this imbroglio of the conflicting decisions of this Court on this point is the decision of the Supreme Court in CBN vs. INTERSTELLA COMMUNICATIONS LTD (*supra*). Unfortunately, it has not turned out to be the smoking gun that it ought to be as the disparate decisions of this Court have relied on some aspect of the said case to arrive at a decision. The said case of CBN vs. INTERSTELLA COMMUNICATIONS LTD (*supra*) and how it has been interpreted, applied, and followed by the Courts is reminiscent of what the learned authors of the 12th Edition of Maxwell on Interpretation of Statutes stated in the Preface of the 12th Edition of the work. This is what they said: "Maxwell might well be subtitled, 'the practitioner's armoury'; it is, I trust not taking too cynical a view of statutory interpretation in general and this work in particular; to express the hope that counsel putting forward diverse interpretations of some statutory provision will each be able to find in Maxwell dicta and illustrations in support of his case." **This is true of CBN vs. INTERSTELLA COMMUNICATIONS LTD (*supra*). It is the "judicial officer's armoury" and in the decisions of the Courts on whether consent of the Attorney-General is mandatory to commence garnishee proceedings against the Appellant, Judges and Justices have found dicta in the said case to support whatever decision they arrive at, pro and con!** I will randomly pick two decisions to buttress the point. In CBN vs. ATANA (*supra*) at page 8, Daniel-Kalio, JCA opined: "... the decision of the Supreme Court in CBN vs. Interstellar Comm. Ltd (*supra*) which tends to support the view that by Section 84 of the Sheriffs and Civil Process Act, the consent of the Attorney-General of the Federation is required in a case like this." On the*

other hand, in *CBN vs. LIDAN ENGINEERING LTD (supra)*, Dongban-Mensem, PCA, conclusively held as follows at page 14: "In resolving this issue against the Appellant, I am bound by the decision of the Apex Court in *CBN vs. INTERSTELLAR COMMUNICATIONS LTD & ORS (supra)* that the Appellant is not a public officer, therefore the consent of the Hon. Attorney-General of the Federation is not required." In *CBN vs. INTERSTELLA COMMUNICATIONS LTD (2017) LPELR (43940) 1* at 79-80, Ogunbiyi, JSC asseverated: "In the case under consideration, I have ruled that the relationship between the appellant and the 3rd and 4th Respondents is that of Banker and customer relationship. In other words, and as rightly argued by 1st and 2nd respondents' counsel, the appellant is not a public officer in the context of Section 84 SCPA, **when regard is had to the history of this appeal**. Section 84 has been reproduced earlier in the course of this judgment. It is apparent herein, on the facts of this case that the CBN acts as a Banker to the Federal Government Funds with respect to government funds in its custody. Section 2 (e) of the CBN Act provides thus: 'act as a banker and provide economic and financial advice to the Federal Government.' Section 36 of the CBN Act also provides: 'The Bank shall receive and disburse Federal Government moneys and keep accounts thereof.' The appellant does not stand as public officer in this situation. Therefore, it follows that the need to seek the consent of the Attorney-General of the Federation does not arise." (Emphasis supplied) The learned law Lord then conclusively held as follows at page 81: "Further still on the relationship between the 3rd Respondent and the appellant in this case, same is purely that of a Banker to a customer. **Therefore, the question of whether the Appellant is a public officer, who cannot release funds except the consent of the AGF is obtained, does not apply to the facts and circumstances of this case.**" (Emphasis supplied) It is the above emphasis which I have supplied, that has informed decisions to the effect that when "regard is had to the history" of *CBN vs. INTERSTELLA COMMUNICATIONS* and the **"facts and circumstances"** of the case as employed in the said dicta; that the consent of the Attorney-General is required because the facts of the said case show that the Attorney-General of the Federation was a party in the case and had indeed participated in negotiations

towards an agreed amount that was to be paid. That in those circumstances the Attorney-General had already given his consent and furthermore, being a party, his consent cannot be sought in the circumstances. In casting his lot with proponents of the view that the consent of the Attorney-General under Section 84 of the Sheriffs and Civil Process Act was not required to commence garnishee proceedings, Ugo, JCA rationalized his views in CBN vs. UMAR (supra) at pages 6-9 and intoned: "I am not unaware of the argument in some quarters that the decision of the apex Court in C.B.N. v. Inter Stella Communications Ltd (2018) 7 NWLR (PT 1618) 294 (SC) was rather based on the fact that the Attorney-General was in that case held to have given his consent by implication to the garnishee proceedings, he having earlier instructed some payment of the judgment debt in issue before the commencement of the garnishee proceedings. It is thus argued that that fact is the real basis or ratio decidendi of C.B.N. v. Inter Stella Communications Ltd (2018) 7 NWLR (PT 1618) 294 (S.C.) and not its pronouncement distinguishing Ibrahim v. JSC (supra) and affirming emphatically that 'The appellant [same Central Bank of Nigeria] does not stand as a public officer in this situation. Therefore, it follows that the need to seek the consent of the Attorney-General of the Federation does not arise.' I am not by any means persuaded by that argument given the very clear pronouncement of Ogunbiyi, JSC, in her lead judgment as shown above directly distinguishing its earlier Limitation Statute/Public Officers Protection Law case of Ibrahim v. JSC (supra) where public officer was defined as including an artificial public person or office as shown in the passage of her judgment earlier reproduced. It has to be noted too that her Lordship even went further to say that this Court's decision in Purification Tech (Nig.) Ltd v. A.G. Lagos State & Ors (2004) 9 NWLR (PT 879) 665 is 'on all fours' with C.B.N. v. Inter Stella Communications Ltd (2018) 7 NWLR (PT 1618) 294 (S.C). Incidentally, Purification Tech (Nig.) Ltd v. A.G. Lagos State & Ors (supra) did not involve any issue of the Attorney-General giving a prior instruction for payment of judgment debt. It was rather simply about the instant issue of whether prior consent of Attorney-General is a condition precedent under Section 84 of the Sheriffs and Civil Process Act to commence garnishee proceedings to attach debts

of a judgment debtor customer of the Central Bank of Nigeria which funds it holds as a banker to the judgment debtor. **It is thus my humble opinion, still, that the decision of the apex Court in C.B.N. v. Inter Stella Communications Ltd (2018) 7 NWLR (PT 1618) 294 was simply to the effect that prior consent of Attorney-General is not a condition precedent under Section 84 of the Sheriffs and Civil Process Act for commencement of garnishee proceedings to attach debts of a judgment debtor/customer of the Central Bank of Nigeria.** In any case, even if the finding of the apex Court in C.B.N. v. Inter Stella Communications Ltd, to the effect that the Attorney-General by his actions in that case by directing payment of the debt prior to the commencement of the garnishee proceeding had given his consent to the attachment, that would only be one of two rationes decidendi for the decision, and not that it in any way reduces to a mere obiter dictum its clear decision that Attorney-General's consent is not needed to commence garnishee proceedings against the Central Bank of Nigeria to attach debts due to its judgment debtor/customer, for as it was said by Karibi-Whyte, JSC, in lead judgment in *Aeroflot Soviet Airlines v. United Bank for Africa Ltd* (1986) 3 NWLR (PT. 27) 188 @ 199 Para. D-E: 'It is well settled that where two reasons are given for a judgment, they may both constitute the ratio decidendi for such judgment. *Jacobs v. L.C.C.* (1950) 1 ALL E.R. 737, *London Jewellers Ltd v. Stentorough* (1934) 2 K.B. 206. A reason given by a judge is not to be regarded as obiter dictum merely because another reason equally valid was also given." See also *ECOBANK vs. ADMIRAL ENVIRONMENTAL CARE LTD* (*supra*) and *CBN vs. OKECHUKWU* (*supra*). Howbeit, I have already set out the text of Section 84 of the Sheriffs and Civil Process Act. It is only where funds of the judgment debtor are in the custody or control of a public officer that the law requires the consent of the "appropriate officer," defined in the Act as the Attorney-General, to commence garnishee proceedings. The corollary is that where the funds are not in the custody or control of a public officer there is no need to obtain the consent of the Attorney General. The brass tacks and bottom line to this second issue is whether the Appellant, the Central Bank of Nigeria, is a public officer. **It is instructive that while "appropriate officer" is defined in the Sheriffs and Civil Process Act, "public officer" is not**

*defined. Therefore, it is to the Interpretation Act which enacts for the construction and interpretation of Acts of the National Assembly that we will turn to. Section 1 of the Interpretation Act stipulates: "This Act shall apply to the provisions of any enactment except in so far as the contrary intention appears in this Act or the enactment in question." There is no expression to the contrary on the applicability of the Interpretation Act to the Sheriffs and Civil Process Act. **Section 18 (1) of the Interpretation Act 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 1999 or of the public service of a State". In the same vein, paragraph 19 of the 5th Schedule to the 1999 Constitution (dealing with Code of Conduct for Public Officers) defines public officer as "a person holding any of the offices specified in Part II of this Schedule." The said offices specified excludes a public institution or public office. Flowing from the above is Section 318 (1) of the 1999 Constitution which has been cross-referenced in the definition of "public officer" in Section 18 (1) of the Interpretation Act. Public Service of the Federation is defined in Section 318 (1) of the 1999 Constitution thus: "means the service of the Federation in any capacity in respect of the Government of the Federation and includes service as -". It then goes on to list eight areas in which a person can render service. It is lucent that it refers to service by a natural person as a staff or member of any of the services or agencies therein listed. This is further underscored by Section 84 (3) of the Sheriffs and Civil Process Act which states that the money should be in the custody of a public officer who holds a public office in the public service of the Federation or State. This clearly shows that it is the officer, a natural person, that is referred to and not the public office or institution where he works. It is therefore limpud that the definition does not include public institutions like the Appellant. Accordingly, it seems effulgent from the foregoing that the term "public officer" can only be referrable to a human person occupying or functioning in a public office or government institution in which he or she is engaged, in contradistinction to the office or institution itself. In the circumstances, by no elastic interpretation can the Appellant be termed a "public officer" as employed in Section 84 (1) of the Sheriffs and Civil Process Act.***

In CBN vs. KRUGGERBRENT & CO. NIG. LTD (supra) at 35-39, Tsammani, JCA stated: "The inescapable conclusion I have arrived at, is that the Appellant is not a public officer. In other words, the Appellant does not fall within the meaning of 'a public officer' ... particularly for the purposes of Section 84 of the Sheriffs and Civil Process Act. It is not in doubt that the Central Bank of Nigeria is a body corporate, which can sue and be sued in its corporate name. It is created by the Central Bank of Nigeria (Establishment) Act, 2007. Thus, all employees of the Bank are termed 'public officers' within the contemplation of Section 318 (1) of the 1999 Constitution. See Sharika & Sons Ltd v. The Government of Kaduna State & Ors (2013) LPELR-20329 (CA) and CBN v. Njemanze (2015) 4 NWLR (Pt. 1449) 279. That being so, while these corporate bodies which are created by law provide public services, persons who hold offices in such institutions or corporate bodies are 'public officers'. Thus, Section 84 of the Sheriffs and Civil Process Act envisages natural persons who hold offices in such public institutions or corporations either of the Federation or of a State. Accordingly, a corporate or statutory body such as the Central Bank of Nigeria, being an artificial person, does not qualify as such public officer within the ambit of Section 84 of the Sheriffs and Civil Process Act... On that note, and on the facts, I find that the relationship between the Appellant and the 2nd and 3rd Respondents, is merely that of Banker and Customer and nothing else. The Appellant, I reiterate, is therefore, not a public officer within the context of Section 84 of the Sheriff and Civil Process Act, though it acts as Banker to the Federal Government Funds in its custody ... I therefore hold that, the Appellant, not being a public officer, the need to seek consent of the Attorney General of the Federation did not arise." The decision of this Court in CBN vs. KRUGGERBRENT & CO. NIG LTD (supra) was delivered on 29th April 2022. CBN vs. EZEANYA (supra), which arrived at a similar decision was decided on 9th May 2022. I am not oblivious of the recent decision of this Court in CBN vs. ENOCH (supra) which was delivered on 14th October 2022 wherein it was held that the Central Bank of Nigeria is a public officer. The raison d'etre for this decision placed reliance on the decision of the Supreme Court in IBRAHIM vs. JUDICIAL SERVICE COMMITTEE, KADUNA STATE (1998) 14

NWLR (PT. 564) 1 wherein it was held that both artificial and natural persons were entitled to the protection afforded by the Public Officers Protection Law. **With due deference, it would seem that the decision in IBRAHIM vs. JUDICIAL SERVICE COMMITTEE, KADUNA STATE (supra) is inapplicable in the diacritical circumstances of this matter. I will explicate. What came up for interpretation in IBRAHIM vs. JUDICIAL SERVICE COMMITTEE, KADUNA STATE (supra) was not the phrase "public officer". What came up for interpretation was the phrase "any person" as employed in Section 2 (a) of the Public Officers (Protection) Law of Northern Nigeria, which is in pari materia with Section 2 (a) of the Public Officers Protection Act. It is instructive and bears underscoring, that apart from the title of the law, Public Officers Protection Act (Law), the phrase "public officer" does not appear in the body of the legislation. In construing and interpreting the phrase "any person", Iguh, JSC in IBRAHIM vs. JUDICIAL SERVICE COMMITTEE KADUNA STATE (1998) LPELR (1408) 1 at 23-24 opined: "I will now consider whether, as submitted by learned counsel for the appellant, the respondents are not covered under the Public Officers (Protection) Law, for the sole reason that the 1st respondent was sued as an artificial person, a public body or a corporate entity whilst the 2nd respondent, for his own part, was sued by his official title and not in his personal names. Put differently, do the words 'any person' as provided in Section 2 of the Public Officers (Protection) Law of Northern Nigeria, 1963, refer only to natural persons, that is to say, to human beings sued in their personal names to the exclusion of artificial persons, public bodies, corporate entities, and public officers sued by their various individual official titles, such as Attorney-General or Permanent Secretary. The answer to the above question will depend entirely on the interpretation of the words 'any person' in Section 2 of the relevant law." After referring to the definition of "person" in Section 3 of the Interpretation Law, Cap. 52, Laws of Northern Nigeria, 1963 and Section 18 (1) of the Interpretation Act, as including "any body of persons corporate or unincorporated" the learned JSC affirmed at page 31: "It is my view therefore that the words 'any person' as provided in Section 2 of the Public Officers**

(Protection) Law of Northern Nigeria, 1963 are not limited only to natural persons or human beings or to persons sued in their personal names. Unless the contrary intention is indicated, and no such intention is therein manifested, those words in the Public Officers (Protection) Law include persons known to Law, inclusive of artificial persons, public bodies or body of persons corporate or incorporate as well as statutory bodies or persons, whether sued by their official titles or not, so long as they are sued in respect of an act or acts done in pursuance or execution of any Law or of any public duty or authority." It is translucent from the foregoing, that IBRAHIM vs. JUDICIAL SERVICE COMMITTEE, KADUNA STATE (supra) merely decided that the phrase "any person" encompasses both natural and artificial persons, such that public institutions are equally entitled to take advantage of the three-month time bar available to public officers under Section 2 (a) Public Officers Protection Act. The Supreme Court did not decide that 'public officer' equates to public office or institution for all purposes. The point to underscore as noted in the decision is that the definition of "public officer" in Section 18 of the extant Interpretation Act is markedly different from Section 3 of the Interpretation Act of Northern Nigeria, 1963 "which equates the term 'public officer' with 'public department' and includes every officer or department invested with the performance of public duties". Therefore, reliance on IBRAHIM vs. JUDICIAL SERVICE COMMITTEE, KADUNA STATE (supra) as authority for the proposition that the Appellant is a public officer is to take the ratio of the decision out of context in order to give it a general application to an entirely different situation. This is not to be done: FAWEHINMI vs. NBA (NO. 2) (1989) 2 NWLR (PT 105) 558 at 650 or (1989) LPELR (1259) 1 at 139 and ADEGOKE MOTORS LTD vs. ADESANYA (1989) 5 SC 92 at 100. The harbour looms in sight at the horizon. As I steer this judgment towards the harbour, it is abecedarian law that this Court is bound by its previous decisions based on the doctrine of stare decisis. The legal position in this regard was authoritatively stated by Ogundare, JSC in the following words in the case of USMAN vs. UMARU (1992) LPELR (3432) 1 at 21: "It is now well settled that under the doctrine of stare decisis, the Court below as an intermediate Court of

Appeal between the Court below it and this Court as the final appellate Court, is bound by its own decisions except in circumstances specified in Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All E.R. 293, 300, that is; (a) the Court of Appeal is entitled to decide which of two conflicting decisions of its own it will follow; (b) it will refuse to follow its own decision which, though not expressly overruled, cannot in its opinion stand with a decision of this Court; and (c) it is not bound to follow a decision of its own if it is satisfied that the decision was given per incuriam. See Osumanu v. Amadu (1949) 12 WACA 437, Davis v. Johnson (1978) 1 All E.R 1132." It is therefore evident, based on the rule in *YOUNG vs. BRISTOL AEROPLANE CO. LTD (supra)*, that this Court is bound by its previous decision except where the circumstances specified in *YOUNG v. BRISTOL AEROPLANE CO. LTD (supra)* are applicable. See *OKEKE vs. THE STATE (1995) 4 NWLR (PT 392) 676, APARI vs. HOSE (1999) LPELR (6650) 1 at 8 (CA), INEC vs. PDP (2022) LPELR (57379) 1 at 53-54 and INEC vs. PDP (2022) LPELR (57380) 1 at 54-56*. The said circumstances are present in the context of this matter, against the background of the several conflicting decisions of this Court on the issue. Accordingly, I kowtow to the decisions of this Court wherein it has been held that the Appellant is not a public officer for purposes of Section 84 (1) of the Sheriffs and Civil Process Act. It is hoped that sooner, rather than later, the apex Court would have the opportunity to make an ex-cathedra pronouncement in this area of the law in order to bring clarity and certainty to the law. **In a summation, this issue number two is resolved in favour of the 1st Respondent. The lower Court was right to entertain the garnishee proceedings as there was no legal requirement for the prior consent of the Attorney-General of the Federation to commence the garnishee proceeding since the Appellant is not a public officer within the meaning and intendment of Section 84 of the Sheriffs and Civil Process Act.** [Emphasis added]⁶⁴

⁶⁴ *CBN v. Lafferi (2022) LPELR 59207 (CA) 30 [A-C] (Ogakwu, JCA).*

4.0 Remarque Finale

In closing I am convinced that the CBN is not a public officer within the context of section 84 SCPA. The intendment of the draftsmen to limit its applicability to natural persons is self-evident in subsection 84 (3) which provides clarification on the type “public officer” referenced in subsection 84 (1) in defining the word “appropriate officer.” The CBN does not hold office in the public service of the Federation or State. The CBN is not a member or staff of the public service of the Federation or State. The CBN is a bank and acts as a banker in respect of money deposited into government accounts with the CBN. The relationship between the CBN and Government is a banker and customer relationship. My parting shot would be to reiterate the dicta of the Court in *CBN v. Lafferi*⁶⁵ –

It is thus my humble opinion, still, that the decision of the apex Court in C.B.N. v. Inter Stella Communications Ltd (2018) 7 NWLR (PT 1618) 294 was simply to the effect that prior consent of Attorney-General is not a condition precedent under Section 84 of the Sheriffs and Civil Process Act for commencement of garnishee proceedings to attach debts of a judgment debtor/customer of the Central Bank of Nigeria.

With your concurrence and having exhausted all arguments, the defence rests. C’est fini.

⁶⁵ *ibid*, 30 [A-C] (Ogakwu JCA) citing *CBN v. Umar* (2021) LPELR 55565 (CA) 8 [D-E] (Ugo JCA).

Further Reading

Further reading on the controversy about section 84 SCPA and the Supreme Court decision in *CBN v. Interstella* (2017) may be found in the following sources: -

Book

Wodi A, *Garnishment Law and Practice in Nigeria, UK, and US* (Barnes and Noble, 2023). ISBN 9798987288306. Also Available in Kindle Edition, Paperback and Hard Cover on Amazon.

Cases

CBN v. Interstella (2014) LPELR 23295 (CA)

CBN v. Njemanze (2015) 4 NWLR (Pt 1449) 279 (CA)

CBN v. Interstella (2017) LPELR 43940 (SC)

CBN v. Kruggerbrent (2022) LPELR 57571 (CA)

CBN v. Ezeanya (2022) LPELR 57598 (CA)

CBN v. Laffer Nigeria Ltd (2022) LPELR 59207 (CA)

CBN v. Barbedos Ventures Ltd (2023) LPELR 61120 (CA)

Legislative Resources

The relevant provisions of the Interpretation Act and Constitution are also reproduced below:

INTERPRETATION ACT

AN ACT TO PROVIDE FOR THE CONSTRUCTION AND INTERPRETATION OF ACTS OF THE NATIONAL ASSEMBLY AND CERTAIN OTHER INSTRUMENTS; AND FOR PURPOSES CONNECTED THEREWITH. [1964 NO.1.] [20TH JANUARY 1964]
[COMMENCEMENT]

1. This Act shall apply to the provisions of any enactment except in so far as the contrary intention appears in this Act or the enactment in question.

18 (1) - In an enactment the following expressions have the meanings hereby assigned to them respectively, that is to say-

"person" includes any body of persons corporate or unincorporate;

"public officer" means 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;

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

Part IV

INTERPRETATION, CITATION AND COMMENCEMENT

318.— (1) In this Constitution, unless it is otherwise expressly provided, or the context otherwise requires -

"civil service of the Federation" means service of the Federation in a civil capacity as staff of the office of the President, the Vice-President, a ministry, or department of the Government of the Federation assigned with the responsibility for any business of the Government of the Federation;

"civil service of the State" means service of the Government of a State in a civil capacity as staff of the office of the Governor, Deputy Governor or a ministry or department of the Government of the State assigned with the responsibility for any business of the Government of the state;

"Federation" means the Federal Republic of Nigeria;

"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 High Court of the Federal Capital Territory, Abuja, the 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 the National Assembly;

(c) member or staff of any commission or authority established for the Federation by this 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 the 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;

"public service of a State" means the service of the State in any capacity in respect of the Government of the State and includes service as—

(a) Clerk or other staff of the House of Assembly;

(b) member of staff of the High Court, the Sharia Court of Appeal, the Customary Court of Appeal, or other courts established for a State by this Constitution or by a Law of a House of Assembly;

(c) member or staff of any commission or authority established for the State by this Constitution or by a Law of a House of Assembly;

(d) staff of any local government council;

(e) staff of any statutory corporation established by a Law of a House of Assembly;

(f) staff of any educational institution established or financed principally by a government of a State; and

(g) staff of any company or enterprise in which the government of a State or its agency holds controlling shares or interest.

(3) In this Constitution references to a person holding an office shall include references to a person acting in such office.

(4) The Interpretation Act shall apply for the purposes of interpreting the provisions of this Constitution.

319. This Constitution may be cited as the Constitution of the Federal Republic of Nigeria 1999.

320. The provisions of this Constitution shall come into force on 29th day of May 1999

FIFTH SCHEDULE

CODE OF CONDUCT FOR PUBLIC OFFICERS

PART I

INTERPRETATION

19. In this Code, unless the context otherwise requires -

“public officer” means a person holding any of the offices specified in Part II of this Schedule; and

"public office" shall not include the chairmanship or membership of *ad hoc* tribunals, commissions, or committees.

PART II

PUBLIC OFFICERS FOR THE PURPOSES OF THE CODE OF CONDUCT

1. The President of the Federation.

2. The Vice-President of the Federation.

3. The President and Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representatives and Speakers and Deputy Speakers of Houses of Assembly of States, and all members and staff of legislative houses.
4. Governors and Deputy Governors of States.
5. Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers, and all staff of courts of law.
6. Attorney-General of the Federation and Attorney-General of each State.
7. Ministers of the Government of the Federation and Commissioners of the Governments of the States.
8. Chief of Defence Staff, Chief of Army Staff, Chief of Naval Staff, Chief of Air Staff, and all members of the armed forces of the Federation.
9. Inspector-General of Police, Deputy Inspector-General of Police and all members of the Nigeria Police Force and other government security agencies established by law.
10. Secretary to the Government of the Federation, Head of the Civil Service, Permanent Secretaries, Directors-General, and all other persons in the civil service of the Federation or of the State.
11. Ambassadors, High Commissioners, and other officers of Nigerian Missions abroad.
12. Chairman, members and staff of the Code of Conduct Bureau and Code of Conduct Tribunal.
13. Chairman, members, and staff of local government councils.
14. Chairman and members of the Boards or other governing bodies and staff of statutory corporations and of companies in which the Federal or State Government has controlling interest.
15. All staff of universities, colleges and institutions owned and financed by the Federal or State Governments or local government councils.
16. Chairman, members, and staff of permanent commissions or councils appointed on full time basis.