THE ATTORNEY-GENERAL'S CONSENT IN GARNISHEE PROCEEDINGS: A REVIEW OF THE LAW*

Abstract

One of the ways a judgment-creditor may execute a monetary judgment is via garnishee proceedings. However, under section 84 of the Sheriffs and Civil Process Act 2004, when money sought to be attached via garnishee proceedings is in the custody or control of a public officer, the consent of the Attorney-General must be sought and obtained before instituting garnishee proceedings. The Courts have been inconsistent in their interpretations of 'public officer' and 'custody or control' under section 84,[1] especially in garnishee proceedings involving garnishee-banks. These conflicting decisions have led to uncertainty amongst practitioners on whether it is necessary to seek and obtain the Attorney-General's consent before instituting garnishee proceedings against garnishee-banks. This article examines the conflicting decisions of the Courts on the necessity of seeking and obtaining the Attorney-General's consent before instituting garnishee proceedings against garnishee-banks, vis-à-vis the interpretations of 'public officer' and 'custody or control' under section 84.[2] The article highlights the contradictory interpretations of public officer and 'custody or control' under section 84[3] and proposes an approach propounded by Honourable Justice Abiru, J.C.A., as a means of achieving the much needed certainty in this area of the law.

Keywords: Garnishee, public officer, Attorney-General

1. Introduction

The requirement of seeking the Attorney-General's consent before instituting garnishee proceedings against a public officer is a trite procedural rule amongst lawyers. However, the workings of this rule are a lot more complicated than what meets the eye. At one point or the other, most experienced lawyers would have dealt with the shifting nature of this statutory rule due to the contradictory decisions of the Courts on the application of the rule. In order to avoid objections and drawn-out trials, most lawyers have settled for always seeking the Attorney-General's consent whenever a public institution is the judgment-debtor or garnishee. In an attempt to bring clarity to this area of the law, this article examines the cases dealing with the requirement of seeking the consent of the Attorney-General before instituting garnishee proceedings, analyses the raison *d'etre* behind the decisions and highlights the absence of a universal approach for determining when the consent of the Attorney-General is necessary before instituting garnishee proceedings.

2. Conceptual Clarifications

Garnishee proceedings are the most widely used method of executing monetary judgments. A garnishee is a party who is indebted to the judgment-debtor but was not an original party to the action between the judgment-creditor and the judgment-debtor. By a garnishee order, the garnishee is ordered to pay to the judgment-creditor the debt due from him to the judgment-debtor in order to satisfy the judgment debt. In the case of *Ndubuisi v Jopanputra: In re Diamond Bank Ltd*[4] the Court of Appeal, per Aderemi, J.C.A., extensively explained garnishee proceedings as follows:

> I pause here to remark on the proceedings against the garnishee/appellant/applicant. Put simply, it is for the execution and enforcement of judgment. A judgment has been obtained by the plaintiff/respondents against the defendant (Suresh Jopanputra and Chemiron International Limited). It behoves a successful plaintiff who does not want to lose the fruits of his victory to move fast against the assets of the judgment-debtor to realise the fruits. One of such methods is to obtain the order of court to attach any debt owing to the judgment debtor from any person or body within the jurisdiction of the court to satisfy the judgment-debt. That process is known as 'attachment of debt.' It is a separate and distinct action between the judgment-creditor and the person or body holding in custody the assets of the judgment-debtor, although it flows from the judgment that pronounced the debt owing. A successful party, in his quest to move fast against the assets of the judgment-debtor usually makes an application ex parte for an order in that direction. If the application brought ex parte is adjudged to be meritorious, the Judge will make an order which is technically known as a 'garnishee order nisi' attaching the debt due or accruing to the judgment-debtor from such person or body who from the moment of making the order is called the garnishee. The

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[1] SCPA 2004

[2] ibid

[3] ibid

[4] (2002) 17 NWLR (PT. 795) 120 @ 133, paras: B - G

> order also carries a directive on the garnishee to appear and show cause why he should not pay to the judgment-creditor the debt owed by it to the judgment-debtor or so much of it as may suffice to satisfy his claim. However, the order must be served personally on the garnishee. Upon personal service, that order binds the debt in his hands and he must therefore pay the debt to the judgment creditor.

The most common garnishees in civil proceedings are banks because, more often than not, a judgment-debtor operates an account with a bank, thereby, creating a banker-customer relationship which is synonymous with a debtor-creditor (or vice-versa) relationship, depending on the status of the customer's account. Further insight on the relationship between a bank and a customer can be gotten from the decision in *UBA v UBN Plc*[5] wherein the Court of Appeal held that:

> From the evidence adduced at the lower Court it is not in dispute that the appellant was a customer of the respondent and operated two accounts with the respondents at its Gindiri Branch. The relationship in law between a banker and its customer has been that of debtor and creditor. See Yesufu v African Continental Bank Ltd. (1981) 1 S.C. 74. Also page 92 where Bello J.S.C. (as he then was) explained the principles of banking law and practice:-
> When a bank credits the current account of its customer with a certain sum, the bank becomes a debtor to the customer in that sum: Joachimson v Swiss Bank Corporation (1921) 3 K.B. 110; and conversely when a bank debits the current accounts of its customer with a certain sum: the customer becomes a debtor to the bank in that sum; See Paget Law of Banking, 8th Ed. 9. 84. Whichever party is the creditor is entitled to sue, if demand for payment was not complied with.

Therefore, when the account of a judgment-debtor with a garnishee-bank is in credit, the judgment-creditor, notwithstanding the fact that the garnishee-bank was not a party to the initial action, is entitled to apply to the Court for a garnishee order; whereby the Court directs the garnishee-bank to hand over the money in the judgment-debtor's account to the judgment-creditor in order to liquidate the judgment debt. Under the Sheriffs and Civil Process Act, when money sought to be attached by garnishee proceedings is in the custody or control of a public officer, a condition precedent to instituting garnishee proceedings is the consent of either the Attorney-General of the Federation or the Attorney-General of the State - depending on whether the money sought to be attached is in the custody of a public officer who holds public office in the public service of the Federation or a public officer who holds public office in the public service of a State, respectively. If the consent of the Attorney-General is not sought and obtained, the Court would be stripped of its jurisdiction to make a garnishee order nisi attaching the money in the custody or control of the public officer. The Section 84 of Sheriffs and Civil Process Act is hereunder reproduced verbatim as follows:

> (1)Where money liable to be attached by garnishee proceedings is in the custody or 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-
> (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 rationale behind section 84[6] has been described as the protection of public funds earmarked for public projects from dissipation through the settlement of Court judgments. This was enunciated by Muntaka- Commassie, JCA (as he then was) in the case of *Onjewu v Kogi State Ministry of Commerce and Industries*[7] as follows:

> ….the rationale for the provision in section 84(1) of the Sheriffs and Civil Process Act for the previous consent of the Attorney-General before a Court could validly issue even an order garnishee nisi against the funds in the hands of a public officer 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

[5] (1995) 7 NWLR (PT. 405) 72 @ 79 – 80, paras: H – C
[6] ibid
[7] (2003) 10 NWLR (PT. 827) 40 @ 88 – 89

> appropriation does not end up being the subject of execution for other unapproved purposes under the Sheriffs and Civil Process Law.

However, the application of section 84[8] has now become a topic of controversy due to the divergent positions taken by the Courts on the related issues of whether money sought to be attached in execution of a monetary judgment against a public officer is in the custody or control of the public officer, or the garnishee-bank, and/or whether a garnishee-bank is a public officer under section 84.[9] These issues shall be considered under the following factual scenarios: Money in the custody of a private bank; and money in the custody of the Central Bank of Nigeria.

3. Money in the Custody of a Private Bank

In *Purification Tech. (Nig.) Ltd. v A.-G., Lagos State*,[10] the Court of Appeal was called upon to determine whether money held by the Lagos State Government/judgment debtor in a private bank was in the custody or control of a public officer and therefore subject to the provision of section 84[11]. The issue was resolved against the Lagos State Government. The Court relied on the dicta of Atkin L.J. in *Joachimson v Swiss Bank Corp.*[12] which, in summary, states that the relationship between a bank and a customer is one of debtor-creditor and a bank does not hold money in trust for the customer. The Court of Appeal held that a customer's money that is held in a bank is in the custody or control of the bank, not the customer, and there's no basis for treating government bank accounts any differently from bank accounts of every other juristic personality or customers. Therefore, a judgment-creditor who wishes to attach money held in a private bank in execution of a monetary judgment against a public officer does not need to obtain the consent of the Attorney-General before instituting garnishee proceedings against the bank. The judgment of the Court of Appeal which is encapsulated at page 681, paras: A - F of the report is hereunder reproduced verbatim as follows:

> The decision 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 '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…
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> In my respectful view I can say that monies in the hands of garnishee-banker are not 'in custody or 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.

It is commendable that the Courts have been fairly consistent in following the decision in *Purification Tech. (Nig.) Ltd. v A.-G., Lagos State*[13] *(i.e. money held by a public officer in a private bank is in custody or control of the bank), however the writer is of the humble opinion that the decision in Purification Tech. (Nig.) Ltd. v A.-G., Lagos State*[14] *did not fully consider the relationship between a bank and its customers.* A banker-customer relationship is a fiduciary relationship and a bank acts as an agent of its customers. A bank may have physical custody of a customer's money but the customer is in constructive control of the money. Therefore, a bank is under a duty to strictly deploy the money in the account of a customer in accordance with the instructions of the customer. In other words, even though a bank may have physical custody of its customers' money, the 'real' control of the money lies with the customers. The desire to protect the integrity of the justice system may have played a role in the *Purification Tech. (Nig.) Ltd. v A.-G., Lagos State*[15] decision. Governments and public institutions, like any other party, are equal under the law and ought to be treated as such. In the same vein, a private party is entitled to the benefits of the fruits of his judgment and the Courts have a duty to ensure a successful litigant is not deprived of such benefits. Regardless of the rationale behind the judgment, the author applauds the judgment and the consistency of the Courts on the issue of whether the Attorney-General's consent must be obtained before instituting garnishee proceedings against a private garnishee-bank to attach money held by a public officer in the private garnishee-bank. Unfortunately, as would be seen below, the same level of consistency

[8] ibid
[9] ibid
[10] (2004) 9 NWLR (PT. 879) 665
[11] (n 1)
[12] (1921) 3 K.B. 110 at 127
[13] Purification Tech. (Nig.) Ltd. (n 7)
[14] ibid
[15] ibid

has not been replicated by the Courts when garnishee proceedings are instituted against the Central Bank of Nigeria.

4. Money in the custody of the Central Bank of Nigeria

Having resolved the issue of whether a private bank or a public officer is in custody or control of money held by a public officer in a private bank, the Courts were faced with a slightly different scenario in *CBN v Interstella Comm. Ltd.*[16] In this case, the 1st and 2nd respondents initiated garnishee proceedings against the Central Bank of Nigeria (CBN) in order to attach money held by the Federal Government/judgment-debtor in CBN. The trial Court made the garnishee order nisi absolute. The CBN was aggrieved and appealed to the Court of Appeal which dismissed the appeal. Still dissatisfied, the CBN appealed to the Supreme Court. At the Supreme Court, the appellant argued that the 1st and 2nd respondents/judgment-creditors required the consent of the Attorney-General before instituting garnishee proceedings against the CBN. The appellant relied on the decision in *Ibrahim v JSC*[17] and contended that for the purpose of section 84,[18] 'public officer' included Federal Government agencies like the CBN and, by extension, funds in the coffers of the CBN are in the custody or control of a public officer. Therefore, the consent of the Attorney-General of the Federation was required before the commencement of the garnishee proceedings at the trial Court. In resolving the issue of whether the CBN is a public officer under section 84,[19] the Supreme Court relied on the case of *Purification Tech. (Nig.) Ltd. v A.-G., Lagos State*[20] as a persuasive authority and held that:

> The other leg of the argument is where the appellant holds out the CBN as a public officer and relied on the case of Ibrahim v JSC (supra) in particular.
> 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 SHERIFFS AND CIVIL PROCESS ACT, 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 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.

In summary, the Court held that the role of the CBN as a banker to the Federal Government is no different from the role of a private bank to its customers. The same banker-customer relationship transcends both scenarios. There is therefore no reason to treat the CBN any differently from a private bank for the purpose of section 84.[21] It should be noted for proper context that although the Supreme Court held that that the CBN was not a public officer under section 84,[22] it held earlier in the judgment that the consent of the Attorney-General of the Federation was adequately obtained due to the fact on record that the Attorney-General had admitted in an affidavit that the Federal Government was indebted to the 1st and 2nd respondents and the further fact that the Attorney-General was an active participant in the several stages of negotiations, transactions and even part payment of the debt owed. Therefore, according to the Supreme Court, the Attorney-General was fully aware of the judgment debt and by that awareness he had impliedly given his consent. On the same issue of whether the CBN is a public officer under section 84,[23] the Court of Appeal in the case of *CBN v Njemanze*[24] reviewed the Supreme Court's decision in Ibrahim v JSC[25] and held as follows:

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[16] (2018) 7 NWLR (Pt. 1618) 294
[17] (1998) 14 NWLR (PT. 584) 1**.** The rationale behind the decision is that the word 'person' when used in legal parlance encapsulates both natural (human beings) and artificial (corporations, public bodies etc.). Therefore, public officer under section 2 of the Protection of Public Officers Law includes both natural and artificial persons.
[18] (n 1)
[19] ibid
[20] Purification Tech. (Nig.) Ltd. (n 7)
[21] (n 1)
[22] ibid
[23] ibid
[24] (2015) 4 NWLR (PT. 1449) 276 @ 285 - 286
[25] (1998) 14 NWLR (PT. 584) 1

> In construing this provision, the Supreme Court called in aid the provisions of S.3 of the Interpretation Law, Cap. 52, Laws of the Northern Nigeria, 1963 which defined person to include artificial persons. More importantly it defined public officer in these terms: public officer or 'Public Department' extend to and includes every officer or department invested with or performing duties of a public nature whether under the immediate control of the President or the Governor of Northern Nigeria or not.
> Applying the provisions of these legislations IGU, JSC at page 38 determined that 'it is thus clear to me that the terms public officer has been extended to include a 'Public Department and, therefore, an artificial person, a public officer or a public body.
> But the appellant, the Central Bank of Nigeria, is a creation of the Central Bank of Nigeria (Establishment) Act, Cap. C.4, Laws of the Federation of Nigeria which legislation can only be interpreted with the aid of the Interpretation Act. s18(1) of the Interpretation Act interprets public officer to mean a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria 1999 or the Public Service of the State. This definition is clearly not in pari materia with the definition of public service in S. 3 of the Interpretation Law of Northern Nigeria. It excludes 'public department' in its definition…
> This definition clearly excludes artificial persons. I have no difficulty in agreeing with the trial court that the term public officer as used in S. 84 of the Sheriffs and Civil Process Act does not include an artificial person.

The Court of Appeal was of the opinion that the decision in *Ibrahim v JSC*[26] does not apply to the interpretation of whether the CBN is a public officer because the decision in *Ibrahim v JSC*[27] was based on the application of the Interpretation Law, Laws of the Northern Nigeria, s3 while the Interpretation Act, s18 is the applicable provision for the interpretation of a public officer under Sheriffs and Civil Process Act, s84. In other words, 'public officer' under Sheriffs and Civil Process Act, s84 does not extend to artificial persons in the same way 'public officer' under the Public Officers Protection Act, s2 extends to artificial persons. Based on this reasoning, the Court held that the CBN is not a public officer under section 84.[28]

In sharp contrast to the decisions in *CBN v Interstella Comm. Ltd.*[29] and *CBN v NJEMANZE*,[30] the Court of Appeal, in resolving the same issue of whether the CBN is a public officer, held in *CBN v Ainamo*[31] as follows:

> The question is whether the garnishee/appellant, Central Bank of Nigeria is a public officer within the context of Sheriffs and Civil Process Act 2004, s84. The Sheriffs and Civil Process Act has no definition of who a public officer is but section 18 of the Interpretation Act defines a public officer as:
> public officer means 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.'
> There are plethora of judicial authorities on the fact that a Central Bank of Nigeria is a public officer within the meaning of section 84 of the Sheriffs and Civil Process Act. See CBN v Okojie (2015) LPELR 24740 (SC), (2015) 14 NWLR (PT. 1479) 231; CBN v Ukpong (2006) 13 NWLR (PT. 998) 555; Medical Laboratory Science Council of Nigeria v Kenneth & Co. (2017) LPELR (CA); CBN v AMCON & Ors LPELR (CA) and CBN v Maiyini Century Co. Ltd & Anor. (2017) LPELR (CA).
> On the strength of the authorities cited above, I hold that the CBN is a public officer within the meaning of Sheriffs and Civil Process Act 2004, s84.

Herein lies the controversy, while the Courts have interpreted 'public officer' under section 84[32] in cases such as *CBN v Interstella Comm. Ltd.*[33] and *CBN v NJEMANZE*[34] to exclude CBN, cases such as *CBN v Ainamo,*[35] *CBN*

[26] ibid
[27] ibid
[28] (n 1)
[29] Interstella (n 13)
[30] (2015) 4 NWLR (PT. 1449) 276
[31] (2019) 7 NWLR (PT. 1672) 407 @ 419 – 420, PARAS: F – A
[32] (n 1)
[33] Interstella (n 13)
[34] Njemanze (n 26)
[35] (2019) 7 NWLR (PT. 1672) 407

v Okojie[36] and *CBN v Ukpong*[37] etc. interpret 'public officer' under the Sheriffs and Civil Process Act, s84 as extending to artificial persons such as CBN. This has left trial Courts deciding garnishee proceedings and counsel representing parties to garnishee proceedings with a lot of uncertainty as to which set of decisions are applicable to the issue.

5. The Purposive Rule of Interpretation of Statutes: A Possible Solution?

In the case of *CBN v Shuaibu*,[38] the Court of Appeal proposed an approach to determining whether the consent of the Attorney-General is required before instituting garnishee proceedings against a bank for the purpose of attaching money held by a public officer in the bank. The Court relied on the principle of the purposive interpretation of statutes which stipulates that Courts ought to always interpret statutes in such a way that would reflect the intention of the lawmakers. The Court opined that in the determination of whether the consent of the Attorney-General is required before instituting garnishee proceedings, the proper question to ask is whether the money sought to be attached constitutes public funds and that what determines whether money constitutes public funds depends on the status of who owns the money, and not the status of the person in whose physical possession the money is kept. The obiter dictum of the Court encapsulating this proposed approach is hereunder reproduced verbatim as follows:

> With the use of the proper approach of interpretation, the germane question to ask in a garnishee proceedings vis a vis Sheriffs and Civil Process Act 2004, s84 will not be whether the bank or person in physical possession of the money is a public officer, but whether the owner of the money is a public officer. This will render the recurrent question of whether the Central Bank of Nigeria is a public officer for the purpose of section 84 totally irrelevant and the relevant question will be whether the owner of the money in possession of Central Bank of Nigeria is a public officer. This is the narrative that, this Court believes, should guide future conversations on the effect of Sheriffs and Civil Process Act 2004, s84 on garnishee proceedings and not the vexed question of whether the Central Bank of Nigeria is a public officer.

The Court of Appeal only proposed the above approach but failed to apply it to the facts of the case because, based on the principle of judicial precedent, it was bound by the decision of the Supreme Court in *CBN v Interstella Comm. Ltd*.[39] Rather, the Court held that following the Supreme Court's decision in *CBN v Interstella Comm. Ltd.*[40] and the Court of Appeal's decision in *Purification Tech. (Nig.) Ltd. v A.-G., Lagos State*,[41] the CBN is not a public officer under Sheriffs and Civil Process Act 2004, s84 and the consent of the Attorney-General of the Federation was not required before instituting garnishee proceedings against the CBN in the case.

Honourable Justice Abiru, J.C.A.'s obiter dicta in *CBN v Shuaibu*[42] was applied by the Court of Appeal in the case of *CBN v Umar*[43] to resolve the issue of whether money held by Fidelity Bank Plc in an account with the CBN is in the custody or control of a public officer. The Court held at pages 87 -88, paras: F – A of the report as follows:

> It is elementary, and pure common sense, that public fund means monies belonging to the Federal, State and Local Governments and their different agencies and departments. In other words, what determines whether a fund is a public fund is the status of who owns the money, and not the status of the person in whose physical possession the money is kept. It is on this basis that monies belonging to State Governments in possession of private banks qualify as public funds and due for protection under Sheriffs and Civil Process Act 2004, s84, and why monies belonging to a private contractor for completed contracts in the hands of a State Government do not qualify as public funds and not due for protection under Sheriffs and Civil Process Act 2004, s84. Therefore, looking at the wordings of Sheriffs and Civil Process Act 2004, s84, the words money 'in the custody or control of a public officer in his official capacity' must be interpreted with reference to the owner of the said money and not the person in physical possession of the money.

[36] (2015) 14 NWLR (PT. 1479) 231
[37] (2006) 13 NWLR (PT. 998) 555
[38] (2018) LPELR-45639 (CA)
[39] Interstella (n 13)
[40] ibid
[41] Purification Tech. (Nig.) Ltd. (n 7)
[42] Shuaibu (n 33)
[43] (2019) 10 NWLR (PT. 1679) 75

Based on the foregoing, the Court held that from the facts of the case, the money held with the CBN is that of Fidelity Bank Plc/judgment debtor. That being the case, the provision of section 84[44] did not apply as the money did not qualify as a public fund. As a result, the consent of the Attorney-General was not required to institute garnishee proceedings against CBN. As there is yet to be a pronouncement of the Supreme Court adopting the dicta of Honourable Justice Abiru, J.C.A., it may be a bit premature to say that the decision of the Court of Appeal in *Purification Tech. (Nig.) Ltd. v A.-G., Lagos State*[45] has been overruled. The *CBN v Interstella Comm. Ltd.*[46] decision is a Supreme Court decision which clearly overrides the Court of Appeal decisions in *CBN v Shuaibu*[47] and *CBN v Umar*,[48] however, the approach adopted in *CBN v Shuaibu*[49] and *CBN v Umar*[50] greatly simplifies the process of determining whether the Attorney General's consent ought to be sought or not.

Currently, the law is plagued with a lot of uncertainty as to when the consent of the Attorney-General ought to be sought and obtained before commencing garnishee proceedings against garnishee-banks for the purpose of executing monetary judgments against public officers. The purposive approach to the interpretation of Sheriffs and Civil Process Act 2004, s84 offers a potential end to this legal quagmire. The approach looks beyond whether an institution is a public officer and/or who has custody or control of the money sought to be attached. Instead, the approach seeks to discover whether the money sought to be attached constitutes public or private funds. If the money is deemed to be public funds then the consent of the Attorney-General must be sought and obtained before instituting garnishee proceedings, regardless of who has physical custody of such funds. If this approach were to be applied to the facts of the case in *Purification Tech. (Nig.) Ltd. v A.-G., Lagos State*,[51] the fact that the money sought to be attached was in the physical custody of a private bank would be irrelevant to the determination of the issue of whether the consent of the Attorney-General was required. Instead, the Court would be interested in finding out whether the money sought to be attached constituted public funds. From the facts of the case, the money sought to be attached belonged to the Lagos State Government. This clearly places the money in the category of public funds and, by extension, necessitates seeking and obtaining the consent of the Attorney-General of Lagos State before instituting garnishee proceedings against the private bank. Furthermore, by applying the purposive approach to the numerous cases involving the CBN, the interpretation of whether CBN is a public officer would be irrelevant for the purpose of resolving whether the consent of the Attorney-General is required before instituting garnishee proceedings against CBN. Instead, the status of the funds in the custody of CBN would be the relevant consideration. If the funds in the physical custody of CBN are public funds then the consent of the Attorney-General would be required before instituting garnishee proceedings against CBN. On the other hand, if the funds in the physical custody of CBN are private funds, then the consent of the Attorney-General would not be required to institute garnishee proceedings against CBN.

6. A Word of Caution

Adopting the purposive approach propounded by Honourable Justice Abiru, J.C.A. may not necessarily be straightforward in all cases, and a dispassionate and objective scrutiny of the facts and circumstances would be required in certain cases. As a theoretical example, assuming the Federal Government has a budgetary allocation for the liquidation of a debt owed to a judgment-creditor in its yearly budget and the total budget amount (including the budgetary allocation for the liquidation of the debt) is deposited in a bank account operated by the Federal Government. The Court may be required to resolve the issue of whether the judgment-creditor requires the consent of the Attorney-General before commencing garnishee proceedings to attach an amount less than, or equal to, the budgetary allocation for the liquidation of such a debt. Would the amount budgeted for liquidating the judgment debt be severed from the total budget deposited with the bank and designated as a private fund or would the total amount in the account of the Federal Government be designated as a public fund? What if the judgment-creditor seeks to attach an amount greater than the budgetary allocation for the liquidation of the debt, would the resolution of the issue be any different? The author does not intend to give his personal opinion on how any of the issues raised in this article should be resolved as that is the sole prerogative of the judiciary. Rather, it is author's hope that this article would bring these issues to the fore in order to spur constructive and beneficial legal discourse amongst members of the bar and bench.

[44] (n 1)
[45] Purification Tech. (Nig.) Ltd. (n 7)
[46] Interstella (n 13)
[47] Shuaibu (n 33)
[48] Umar (n 38)
[49] Shuaibu (n 33)
[50] Umar (n 38)
[51] Purification Tech. (Nig.) Ltd. (n 7)

7. Conclusion

The law on the requirement of the consent of the Attorney-General before attaching money in the custody or control of a public officer via garnishee proceedings is in dire need of clarity and certainty. The contradictory decisions of the Courts on this issue do not aid the cause of justice. In fairness to the Courts, the Sheriffs and Civil Process Act 2004, s84 is prone to multiple interpretations depending on the facts and circumstances of each case, and there's also the underlying desire of the Courts to ensure that litigants reap the fruits of their judgments. The purposive approach to the interpretation of section 84[52] proposed by Honourable Justice Abiru, J.C.A. in *CBN v Shuaibu*[53] offers a practical, objective and unambiguous method of resolving issues of the Attorney-General's consent in garnishee cases. It is yet to be seen what course the Courts would take following the recent decision in *CBN v Umar*,[54] but whichever course the Courts decide to take it is hoped that a unified approach is finally adopted by the Courts in order to restore certainty to this area of law. In the light of the fluid state of affairs with regards to the interpretation proffered by the Courts, it is imperative that the legislature intervenes decisively to put an end to this controversy by coming out clearly on the position of the law.

[52] (n 1)
[53] shuaibu (n 33)
[54] Umar (n 38)