



The Legal Luminary

In- house E-Newsletter of the Legal Department

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From the Editor!

Welcome to February, the month that makes 2012 a leap year! We have all settled into the year and its running fast. In this issue we look at the concluding part of the article titled “ the legal implication of the court issuing a garnishee order nisi or absolute against the corporation”. It is indeed very educative. Valentines day was recently celebrated and we saw a lot of people dressed in the colors of love. Let us all resolve to show love to our colleagues and fellow men in all we do. Your comments and questions are welcome as always.

Q. Aside from litigation are there alternative ways to settle commercial disputes in Nigeria?

A. Large commercial disputes are usually litigated at the State High Courts and the Federal High Court.

However, Many State High Courts have recently amended their civil procedure rules (CPR) to provide for a front-loaded case filing system, as well as the option of trying alternative dispute resolution (ADR) mechanisms before actual trial commences.

In recognition of the need to embrace ADR Section 19(d) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, provides for the settlement of disputes by Arbitration, Mediation, Conciliation, Negotiation and Adjudication. Where ADR can be employed it is preferable as it is faster, presumably less expensive and actually less cumbersome than court proceedings. This is because court cases have been known to drag on for even up to 17 years while the same issue handled via ADR can be resolved in a few months. For now, ADR is mostly employed in International commercial disputes where both

parties agree to have their issue settled via this medium.

The major types of ADR are arbitration and mediation/conciliation. Lagos State has been a pioneer in the use of ADR by developing the Lagos Multi-door Court House. ADR involves professional and experienced mediators and conciliators, who help in the process of mediation, unlike the court which involves only the judges, the lawyers and the litigants. The professionals utilize their expertise and training to assist parties resolve the issues in dispute in a manner that seeks to ensure a win-win situation for all involved. That is unlike the winner takes all approach in court litigation. Apart from the Lagos Multi door Court House other ADR centers exist such as The Nigerian branch of the London based Chartered Institute of Arbitrators and the Regional Centre for International Commercial Arbitration-Lagos, (RCICAL) Domestic arbitration is governed by the Arbitration and Conciliation Act (Cap 19-Laws of the Federation of Nigeria 1990), which is modeled on the UNCITRAL Model Law.

Jokes & Quotes

“to love another person is to see the face of God” – Les Miserables



NEWS

NIGERIA'S debt profile is set to rise by N1 trillion. President Goodluck Jonathan, who says he is in dire need of funds to execute some critical projects, wants the National Assembly to clear the coast for him to borrow N1.3 trillion from the World Bank, African Development Bank (ADB) and others

International Star Whitney Houston was buried on the 18th of February in NJ, IUSA

A lion has killed 2 herdsmen and 30 livestock in Yobe State.

8 armed Nigerian pirates robbed a cargo ship at anchor in a Nigerian port and kidnapped at least two crew members last Wednesday.

THE LEGAL IMPLICATION OF THE COURT ISSUING A GARNISHEE ORDER NISI OR ABSOLUTE AGAINST THE CORPORATION

Cont from the last edition...

we expect the CBN to always discharge its responsibility of ensuring that the DIF is not depleted unnecessary through various garnishee orders. The CBN must see itself as a stakeholder in these matters, not merely as an unconcerned banker to the Corporation.

On Whether Garnishee proceedings can be instituted or maintained against a bank in Liquidation

Finally, it is clear from Section 41 of the Banks and other financial Institutions Act, 2004, and Section 414 of the Companies and Allied Matters Act, 2004 which expressly provides that

“ where a company is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after commencement of the winding up shall be void”

that legal proceedings - including garnishee proceedings, cannot be instituted against a bank under liquidation. These provisions were enacted to preserve public confidence and efficiency in the liquidation process and to ensure that

all garnishee proceedings instituted against such failed banks may be challenged before the court and struck out.

CBN would need to be informed and advised to cease debiting of the Corporation's account or that of a bank in liquidation in satisfaction of judgment – debts as this is an error in the law. Rather CBN should be encouraged to perform its statutory responsibility of challenging any garnishee order nisi issued against the account of the Corporation, to enable the Corporation fulfil its vision of becoming one of the best Deposit Insurance Corporations in the world.

The Corporation on its own part in conjunction with the CBN, should take drastic steps to challenge all such orders and bringing them to an end. The Corporation should also embark on thorough sensitization of Judges, lawyers and the general public of the fact that garnishee proceedings, cannot generally be instituted and maintained against a bank whose license has been revoked by the CBN and is undergoing liquidation. Furthermore, it must be understood that a suit against a defunct bank is not tantamount to a suit against the Corporation.

SOCIAL DIARY

Trending now in NDIC:
The Corporation organized a 2-day retreat for Board Members at the Transcorp Hilton, Abuja between February 15 and 16, 2012 with the Theme: “Enhancing the Corporation's Effectiveness in the Discharge of its Mandate”



FROM LEFT:CHAIRMAN, HOUSE COMMITTEE ON BANKING AND CURRENCY, REP. JONES ONYERERI; NDIC BOARD CHAIRMAN, ALHAJI HASSAN ADAMU, AND NDIC MANAGING DIRECTOR, MR UMARU IBRAHIM AT THE RETREAT.

Our colleague the indefatigable Mrs N. Coockey Gam added another year on the 28th of February. Also, our amiable colleague Mr A. E. Anyadiegwu also added another year to his life on the 10th of February. The Luminary Team wishes them both many more years and Gods blessings.

