



The Legal Luminary

In-house E-Newsletter of the Legal Department

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From the Editor!

Happy New Year!
I hope everyone had a relaxing and most refreshing Christmas break. 2012 started on a rather interesting note, when the nation received a New Year 'gift' in the form of removal of the petroleum subsidy. We all know what followed, outrage, strikes, and a partial reversal of the pump price. As a Corporation and indeed as a Nation everyone is relieved to be back to work. We at the "Legal Luminary" are thankful for another year and wish to use this opportunity to wish all staff a most successful 2012. It is our prayer that our smiles will surpass our frowns and that the Nigeria of our dreams will become a reality. In this edition we will be looking at garnishee orders as they affect the Corporation. We look forward to questions and comments from our readers.

Q. What are some of the failure resolution options open to the Corporation to resolve problem banks?

A. Banks may run into a myriad of challenges. However, when they have serious problems there must be intervention by the Regulatory bodies, namely CBN and NDIC. A few of the available options are;

Financial Assistance: This entails granting loans or accommodation facilities to the problem bank. Firstly the problems that resulted in illiquidity must be addressed or the same problems will re occur. The financial assistance is usually supported by aggressive debt recovery and other measures such as holding action, right sizing, etc

Technical assistance: This is where the management of the failing bank is taken over by the CBN/NDIC either directly or through appointment of managers. The new management is

given terms of reference and a time period within which to rectify the problem of the failing bank.

Bridge bank: This is a bank established by NDIC to acquire the assets and assume the liabilities of a failed or failing Bank. So far, 3 bridge banks had been organized and they have been transformed into normal banks through their acquisition by a core investor, Keystone, Enterprise and Main street Banks.

Purchase & Assumption (P & A): This resolution option can be used in either a closed or open bank assistance regime. Usually a buyer offers to purchase some or all of the failed banks assets in consideration of assuming some or all of its liabilities.

Life Boat Scheme: This entails granting of liquidity to a problem bank. This resolution option is employed where the problem bank is solvent but has liquidity problems.

THE LEGAL IMPLICATION OF THE COURT ISSUING A GARNISHEE ORDER NISI OR ABSOLUTE AGAINST THE CORPORATION (part 1)

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Chioma N. Momah

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Chioma N. Momah

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"It is a matter of shame that in the morning the birds should be awake earlier than you"

NEWS

Following the removal of subsidy on petrol which saw the pump price dramatically increase from N65 to N140 on January 1st. NLC/TUC embarked on what can be termed the mother of all strikes. Eventually the FG reduced the price to N97 per litre.

Hafiz Ringim sacked and replaced with Mohammed Abubakar.

Farida Waziri sacked as EFCC Chairman.

Al-Mustapha sentenced to death for murder of late Kudirat Abiola.

Djkovich defeats Nadal in longest ever tennis match to win Australian open.

NDIC gets new ED Corporate Services in the person of Mrs. Lola Abiola –Edewor

A number of cases have been instituted over time in various courts against some defunct banks in – liquidation, which NDIC, by virtue of its being liquidator was joined as a party to the suits. These cases are at various stages, and a number of them have obtained garnishee orders against the Corporation. It is important to clarify the legality or otherwise of several debits on the account of NDIC by the Central Bank of Nigeria (CBN), in its capacity as a Garnishee, while citing court orders as a reason.

We will therefore look at the following issues for determination:

Whether the CBN can legitimately debit the account of the Corporation maintained with it in satisfaction of a garnishee order made by a court:

The Corporation's account cannot be debited pursuant to a garnishee order *nisi* especially where the Corporation is not the judgment debtor but the bank in Liquidation is the judgment debtor. Conversely, where the notice of the order was not served on the bank in liquidation or Corporation qua liquidator or the Corporation as debtor as required by the provisions of the Sheriffs and Civil processes Act, 1990 and the Judgment (Enforcement) Rules, the account cannot be debited.

Also, an order *nisi* does not confer on the garnishee the duty to debit the debtors account. However, the CBN may ordinarily, if not for the provisions of CAMA (Supra) debit the **account of the bank in liquidation** pursuant to a valid garnishee order *absolute*, made against the bank in liquidation bearing in mind that the law provides some preconditions that must be met to confer legitimacy on the procedure.

On the requirement of service of the garnishee order nisi on the Corporation before the order is made absolute

In every case of a garnishee proceeding against a failed insured financial institution, it must be ascertained whether or not the requirement for service of the order *nisi* as stipulated in the Sheriffs and Civil Processes Act, 1990, has been complied with, as this issue is fundamental to the garnishee proceeding and it goes to the root of the matter. The whole procedure can be challenged by the Corporation as void *ab initio*. By virtue of **Section 83(2) of the Sheriffs and Civil Processes Act**, a copy of the order *nisi* shall be served upon the garnishee and on the judgment – debtor at least fourteen (14) days before the hearing.

On the issue of whether or not the Corporation can challenge a garnishee order

Issued against it

Generally, a judgment – debtor is, strictly speaking, not a party to garnishee proceedings and therefore, may not be able to challenge it directly. The right to challenge the garnishee order *nisi* through an affidavit and also appeal against the order made absolute lies within the ambit of the garnishee, which in this case is the CBN. The CBN should not be encouraged to relate to the Corporation as any of its other clients. NDIC is vested with a sensitive legal mandate, incomparable with any other Government agency, and being a major regulator in the banking sector,...to be cot'd

SOCIAL DIARY

The Corporation has deployed additional security measures (Metal detector doors) in order to combat the insecurity . The Corporation has also embarked on a massive redeployment of staff to various departments and zonal offices. We wish our colleagues all the best as they settle into their new assignments. Staff of the Corporation came to work dressed down during the week long NLC/TUC strike. It was nice to work in a relaxed mode
On a sad note we commiserate with our colleagues Tanko Ahmed who lost his father, B.A. Taribo who lost his eldest brother and K.F. Marcus who lost his beloved mother. May their precious souls RIP.