LEAD DEBATE ON SHERIFFS AND CIVIL PROCESS ACT CAP.S6, LAWS OF THE FEDERATION OF NIGERIA, 2004 (AMENDMENT) BILL, 2018.

Sponsored by: **Senator David Umaru (Niger East)**

Preamble

Mr. President, my Distinguished Colleagues, permit me to lead the debate on the general principles of Sheriffs and Civil Process Act CAP.S6, Laws of the Federation of Nigeria, 2004 (Amendment) BILL, 2018 which was read for the first time on Tuesday, 30th January, 2018.

This Bill is intended to amend section 84(1) of the Sheriffs and Civil Process Act CAP S6, Laws of the Federation of Nigeria, 2004 (hereinafter referred to as "Principal Act") to introduce some safeguards against unscrupulous use and/or abuse of the requirement of the consent of Attorney General of the Federation or of a State as a precondition for bringing garnishee proceedings against a public officer/ institution who is indebted to the judgment debtor and in custody of funds to satisfy the judgment creditor's debt.

Objectives of the Bill

The proposed amendment to section 84(1) of the Sheriffs and Civil Process Act (SCPA) CAP S6, LFN, 2004 is expected to achieve the following objectives –

(1) ensure that Attorney General of the Federation(AGF) does not unreasonably or unscrupulously withhold consent to a judgment creditor who requests consent as a prelude to the commencement of garnishee proceedings;

(2) prevent the use of the requirement of consent by the AGF as a weapon to shield a Garnishee and frustrate the commencement of Garnishee proceedings contemplated against a custodian of public funds who may be sued as a Garnishee by the judgment creditor;

(3) Ensure transparent use of the consent provision by the AGF to serve the course of justice and rule of law and not personal aggrandizement so that court's judgments are not rendered nugatory and ineffectual.

(4) Dispense with the requirement of AGF's consent as a precondition for the commencement of Garnishee proceedings in situations where the AGF is privy to a money judgment for which Garnishee proceeding is initiated, and to give effect to the recent decision of the supreme court reached on Friday, 15th December, 2017 in the case of ***CBN v Interstella Communications Ltd & 3 Ors – SC.500/2014*** where the apex court held that the requirement of consent under section 84(1) of the SCPA was by implication fully complied with as the government itself through the AGF negotiated the settlement of the judgment debt and taken steps to settle the debts before it later reneged.

(5) To give the court the opportunity to review AGF's exercise of the power to grant or refuse consent in Garnishee proceedings so that same is not left to the whims and caprices of the AGF.

Background to the Amendment Bill

Mr. President, Distinguished Colleagues, Garnishee proceeding otherwise known as " garnishment" is a judicial process of executing money judgment whereby money belonging to a judgment debtor, in the hands or custody of a third party known as "Garnishee" is attached by order of court in satisfaction of a judgment sum or debt. The primary law regulating Garnishee proceedings is the Sheriffs and Civil Process Act, Cap S6, LFN, 2004 (hereinafter called the " Principal Act").

By virtue of section 83 (1) and (2) of the SCPA, a third party (Garnishee), in control or custody of money or debt belonging to the judgment debtor may be served with an order requesting him to come to court to " show cause" why the judgment debtor's money in his possession should not be attached to satisfy the judgment debt. Section 84(1) and (2) of the Principal Act however provides that "where money liable to be attached by garnishing proceedings pursuant to section 83(1) is in the custody or under the control of a public officer in his official capacity or in *custodia legis*, **consent to such attachment must first be obtained from the Attorney General of the Federation or of a State as the case may be.**

Mr. President, Distinguished Colleagues, the requirement of the consent of the Attorney General of the Federation as a precondition for the commencement of Garnishee proceedings has presented a number of challenges which have become an embarrassment to the courts and successful litigants desirous of enforcing money judgments through garnishment. For instance in a number of reported court cases, the Attorney General of Federation after participating in the adoption of compromise agreement/ consent judgment to liquidate money judgment obtained against government agencies reneges and repudiates such agreements/consent judgement and then turns around to challenge the competency of the garnishee proceedings for failure to obtain his consent . As it happened in the cases of CBN ***v Hydro Air Property Ltd – CA/L/235/2012*** and CBN ***v Interstella Communications Ltd & 3 Ors (supra).***

Over the years, the exercise of the AGF's power to grant consent to the commencement of Garnishee Proceedings has not only worked to stultify Garnishee proceedings but has by implication subverted the provisions of section 287(3) of the 1999 Constitution of the Federal Republic of Nigeria, as amended which imposes an obligation on all authorities and persons (including the AGF) to enforce decisions of all courts established by the Constitution. It is not the intention of the legislature that section 84(1) of the SCPA be used as an umbrella for government agencies to evade their debt obligations.

Conclusion

From the foregoing, the proposed amendment Bill essentially dispenses with the requirement of prior consent of the AGF as a precondition to the commencement Garnishee proceedings by judgment creditors against custodians of public funds belonging to government agencies who may become judgement debtors. Its passage would strengthen the integrity of court judgments as contemplated under section 287(3) of the Constitution and further give legislative backing to the recent interpretation of section 84(1) of the SCPA by the Supreme Court in the case of ***CBN v Interstella Communications Ltd & 3 Ors (supra)*** . I therefore appeal for your overwhelming support for the Second reading of this Bill.

Mr. President, Distinguished Colleagues, this Bill has no financial implication and no compendium is attached as required by **Order 77(3) of the Senate Standing Orders, 2015,** as amended.

Thank you very much for your kind attention.