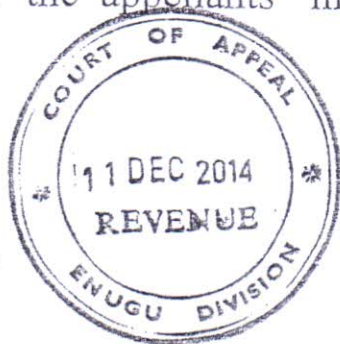


560 page 148 at 161 (f), *Sanusi Vs Modu* (1994) 5 NWLR Pt. 347 page 732 at 739. He further submitted that CBN not having been properly joined in this appeal, any order made by this Court against it would be void.

In reply to the submissions of the appellant's counsel, the applicants' counsel submitted that the application herein is a post judgment application and CBN is in custody of the appellant's money.

Though this application is an off shoot of the main action or appeal, a thorough perusal of the processes so far filed including all the processes relating to the application herein clearly show that CBN has been made a respondent only in respect of the application herein and not a party to the appeal. The submissions of the appellant's counsel and CBN'S counsel is to the effect that CBN has been made a party to this appeal, that is not so. I believe the position of counsel and /or the misunderstanding is caused by the nomenclature or the description of CBN as the 7th respondent. In the application under consideration, CBN is actually the 4th respondent, Appellant being No. 1 respondent, EFCC and CSP Yassu as the 2nd and 3rd respondents respectively. I believe the learned counsel decided to describe CBN as the 7th Respondent to avoid a disorganization or confusion in the nomenclature and heading of the processes. Having stated that, it is clear on the motion papers that the applicants are seeking an alternative relief which is an order directing CBN to pay the appellants' money in its custody into the



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Court. That prayer cannot in law be considered by this Court without hearing CBN. The right of a party to be heard before an order is made against him is the very fundamental principle upon which our administration of justice rests.

It is mandatory that a party who may be affected by the outcome of an action or an application must be joined either as plaintiff or defendant or respondent so that they can be heard in the matter. It is a fundamental right guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Where a party is denied an opportunity of being heard, the proceedings no matter how well conducted is null and void **abintio**, any order made by the court cannot bind him. **See Akere & Ors. Vs the Gov. of Oyo State & Ors. (2012) LPELR 2806 (SC), Zideeh Vs Pt. SC SC (2007 3 NWLR Pt. 9022 page 554 at 568 (C-F).** In view of the alternative relief sought by the applicants which is an order directing CBN to pay the applicant's money in its custody into the Court, CBN is a necessary party to this application. It is necessary to ensure that proper and/or necessary parties are before the court before a point or an issue in contention is determined. Before the order can be made, the Court must ascertain that the appellant actually has money with CBN. Therefore, CBN has been properly joined in the application herein and for a good reason. **In Awoniyi Vs Rtd Trustees of Amorc (supra)** the applicant filed a motion praying for an order directing the Registrar – General of the



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Corporate Affairs Commission to withdraw and cancel the Certificate of Registration of the Respondent and an order directing the Inspector-General of Police to Seal up all the offices of the respondent or any person carrying on activities in the name of the respondent. The Registrar –General of the Corporate Affairs Commission and I.G.P were not made parties to the motion. The application was struck out for failure to join the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police as respondents to the motion. That application was also filed after judgment was delivered in the substantive suit. This is what the Supreme Court. Said at page 533(F-H) ‘

“I do not hesitate to say that the ground upon which the applicant’s motion is filed is unsustainable due to procedural wrongs. The first error is the failure of the applicant to make both the Registrar-General of the Corporate Affairs Commission and the Inspector-General of police parties to the applicant’s motion. It is trite that parties against whom, complaints are made in an action must be made parties to such action, See Uzor Vs Nigerian Stores Workers Union (1973)970 SC 35. It is an elementary procedure in prosecuting Civil Claims that all parties necessary for the invocation of the judicial powers of the Court must come before it so as to give the Court jurisdiction to grant the reliefs sought. See Olomode Vs Oyebi (1984) 1 SC NLR 390 and Okafor Vs Nnafa

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(1973) 3 SC 85. The failure of the applicants to make the Registrar-General of the Corporate Affairs Commission and the Inspector-General of Police as necessary parties has rendered the applicant's motion incompetent".

For these reasons, Issue 2 is resolved in favour of the applicants.

Issue 3 is whether on the facts and circumstances disclose in this case, the interest of justice will be better served by granting the order sought. The appellants counsel submitted that a judgment debtor be it a bank, will not be allowed to retain the judgment debt despite the pendency of an appeal as that will amount to treating the judgment creditor as an underdog and favouring the judgment debtor. He referred to *USN Vs Odusote Bookshop Ltd* (1994) 3 NWLR Pt. 331 page 129 *Mobil Oil Nig. Ltd. Vs Agadaigho* (91988) 2 NWLR Pt.77 page 83, *NNPC Vs BCE Consulting Eng.* (2004) 2 NWLR Pt. 838 page 484 at 501 (D-H), *Kopek Constr. Ltd. Vs Ekisola* (1998) 10 NWLR pt. 568 page 120 at 130 (B).

In response to the above submission, the appellant's counsel submitted that rather than deploy energy towards the expeditious hearing of the substantive appeal, the applicants are content with deliberately creating a situation of delay and exploiting the same situation in their favour to seek interlocutory reliefs. He further argued that it does not accord with the rule of equity for the applicants to create a frustrating circumstance in the way of expeditious hearing of the appeal and then be

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