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THE RECEIVERSHIP THROUGH COUNSEL OF ITS CHOICE**

NECONDE ENERGY LIMITED v. FBNQUEST MERCHANT BANK LIMITED & 4 ORS

SUPREME COURT OF NIGERIA

(GARBA; AGIM; TSAMMANI; ADAH; IDRIS, JJ.SC)

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Background Facts

Nestoil Limited (3rd Respondent) became indebted to a consortium of banks under a syndicated arrangement, albeit structured as bilateral transactions amounting to the cumulative sum of ₦244,776,613,049.69 and \$586,977,502.59, with interest. To restructure and streamline the administration of the loan facilities, the lenders entered into a Common Terms Agreement dated 8 December 2022, otherwise referred to as the Global Club Deal. FBNQuest Merchant Bank Limited (1st Respondent), acted as the facility agent for the lenders, while First Trustees Limited (2nd Respondent) acted as the global security agent under the transaction. As security for the indebtedness, Neconde Energy Limited (the Appellant) executed a Deed of Charge in favour of the 2nd Respondent, charging its interest in OML 42 JV together with other assets, both as security and as a source of repayment of the facilities. Ernest Azudialu-Obiejese and Nnena Azudialu-Obiajese (4th and 5th Respondents) also guaranteed the facilities and pledged their assets as collateral security. Under the terms of the security arrangement, the 2nd Respondent was empowered, upon default in repayment, to enforce the security and recover the indebtedness either directly or through the appointment of a receiver/manager over the charged assets.

Following an alleged default by the 3rd Respondent in servicing the facilities, the 2nd Respondent appointed Mr. Abubakar Sulu-Gambari, SAN, as Receiver/Manager over the assets of the Appellant and other

obligors by a Deed of Appointment dated 21 August 2025. The appointment was subsequently registered with the Corporate Affairs Commission. Thereafter, the 1st and 2nd Respondents instituted proceedings before the Federal High Court, Lagos Judicial Division, against the Appellant and the other Respondents for the enforcement of the security interests and recovery of the outstanding indebtedness.

During the proceedings before the Federal High Court, Lagos, Hon. Justice D. I. Dipeolu granted an ex parte Mareva injunction restraining the Appellant and the 3rd to 5th Respondents from dealing with the charged assets and also authorised the Receiver/Manager to take possession of the Appellant's and 3rd Respondent's assets, including the Appellant's interest in OML 42 JV. However, after the matter was reassigned to Hon. Justice D. E. Osiagor, the court held on 20 November 2025 that the ex parte injunction had lapsed after fourteen days for want of a valid subsisting order extending it. Dissatisfied with the ruling, the 1st and 2nd Respondents appealed to the Court of Appeal and sought restorative injunctive orders pending the determination of the appeals.

During the appeal proceedings, a dispute arose over who had the authority to appoint counsel for the Appellant. While the Appellant's board retained Chief Wole Olanipekun, SAN, and his team, the Receiver/Manager also appointed separate counsel and applied to disqualify Olanipekun's team on the ground that only the Receiver/Manager could act for the company

while under receivership.

In its ruling, the Court of Appeal upheld the application and held that only the Receiver/Manager had the authority to appoint counsel for the Appellant during the receivership, thereby disqualifying Chief Wole Olanipekun, SAN, and his team from representing the Appellant. Aggrieved by the decision, the Appellant appealed to the Supreme Court.

One of the issues for determination was: *Whether, having regard to the nature of the claims before the trial court, the Court of Appeal was right in holding that only the Receiver/Manager possesses the legal authority to appoint counsel to represent the Appellant, to the exclusion of the Appellant acting through its board of directors.*

Arguments

Learned Silk for the Appellant argued that a company under receivership may be subject to the powers of a receiver/manager; however, it retains the right to defend itself in proceedings instituted against it. He submitted that the Respondents failed to identify any provision of law, the Deed of Charge, or any other instrument conferring on the receiver/manager the authority to appoint counsel for the Appellant in a suit commenced against the Appellant by the Respondents.

He maintained that the appointment of the receiver/manager remained under challenge before the trial court on the ground that the charge relied upon by the Respondents was merely a subordinated charge whose enforcement rights had not crystallised, and until the validity of the appointment is determined, it is premature for the Respondents to contend that the receiver/manager possesses the authority to appoint counsel for the Appellant.

The Learned Silk further argued that any interpretation permitting a receiver/manager or his appointor to control the legal representation of a defendant company in proceedings commenced against it would lead to an absurd result by allowing a plaintiff to appoint counsel for the defendant, thereby undermining the adversarial nature of judicial proceedings and violating the Appellant's right to fair hearing. He further submitted that the right to legal representation forms part of the constitutional guarantee of fair hearing and is not limited to criminal proceedings.

In response, Learned Silk for the 1st and 2nd Respondents submitted that the decision of the Court of Appeal disqualifying the Appellant's counsel was supported by law and the terms of the transaction documents. Counsel argued that the relevant statutory provisions empower a receiver/manager to appoint



solicitors and other professionals in the discharge of his duties, while the Global Security Agreement executed by the Appellant conferred extensive powers on the receiver/manager, including the authority to appoint legal practitioners for the protection and management of the charged assets.

The Learned Silk further contended that the Appellant's reliance on the constitutional right to counsel was misconceived, as the right to counsel of one's choice applies principally in criminal proceedings and does not operate with the same breadth in civil matters. Counsel maintained that once a receiver/manager is appointed over a company's assets, the management and control of those assets vest in the receiver/manager, including the authority to take decisions relating to litigation concerning the charged assets.

DECISION OF THE COURT

In resolving the issue, the Supreme Court held that:

A company acting through its board of directors has the authority to appoint counsel to represent it in proceedings where the dispute concerns the legality, validity, propriety, or scope of a receiver/manager. The Court stated that the mere appointment of a receiver over certain assets of a company does not completely divest the company or its directors of all powers, particularly where the company seeks to defend its corporate existence and interests.

The Court explained that although the law recognises that upon the appointment of a receiver/manager, the powers of the directors in respect of the charged assets, including the institution or defence of actions relating thereto, become displaced and vested in the receiver for the duration of the receivership, such powers are limited strictly to matters concerning the charged assets. The powers of the receiver do not extend to disputes challenging the validity, propriety, or scope of the receivership itself. In such circumstances, the company, acting through its directors, retains residual authority to take necessary steps to protect its corporate interests.

In the instant case, the Supreme Court held that the Appellant, through its board of directors, was competent to appoint counsel to represent it in the proceedings. The Court therefore found that the Court of Appeal erred in holding that only the Receiver/Manager could validly appoint counsel for the Appellant and in consequently disqualifying the Appellant's counsel.

Issue resolved in favour of the Appellant.

B. Olanipekun, SAN, with M. Tayo-Oyetibo, SAN, A. Makinde, Esq, R. Nkannebe, Esq, O. Muritala, Esq, R. Nmarkwe, Esq, and V. Bassey, Esq, for the Appellant.

A. Ogie, Esq, for the Receiver/Manager.

V. Ogude, SAN with O. Popoola, SAN, K. O. Fagbemi, Esq, B. Oyun, Esq, K. Wilkey, Esq, and B. Ofulue, Esq, for the 1st and 2nd Respondents.

M. B. Ganiyu, Esq, with M. Ilegbusi, Esq, for the 3rd Respondent

C. E. Obiagwu, SAN with M. Balony, Esq, V. Chinazo, Esq, E. Lumba, Esq, and C. Obiagwu, Esq, for the 4th Respondent.

K. Ogunwumiju, SAN with C. Ojukwu, SAN, O. Osunleti, Esq, C. Omokaro, Esq, C. Mayor-Eze, Esq, and U. C. Osuigwe, Esq, for the 5th Respondent.

This summary is fully reported at (2026) 5 CLRN in association with ALP NG & Co.

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