

LEGAL STATUS OF COMPANIES IN RECEIVERSHIP IN LINE WITH THE 2025 SUPREME COURT OF NIGERIA PRONOUNCEMENT IN DAGAZU'S CASE

By

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Abstract

*In order to carry out its business, a company ordinarily requires capital. The needed capital can be equity capital or debt capital. In most cases, equity capital is never sufficient for the flotation of a company, hence, the resort to debt capital. The powers of a company to carry out its business through debt capital are provided for in section 191 of the Companies and Allied Matters Act 2020 as amended (CAMA 2020). While creditors may find comfort in secured transactions, enforcing such security is often not seamless. Receivership, a remedy arising from secured credit agreements and statutory provisions, is one of the strongest mechanisms available to debenture holders for enforcing or realising securities. In practice, receivership allows debenture holders or creditors to enforce proprietary security and recover debts. However, appointing a receiver has serious implications for the debtor company, including threats to its continued existence. This paper adopted the doctrinal research approach and found, among other things, that the Supreme Court of Nigeria's decision in *Dagazu Carpets Ltd v Bokir International Co. Ltd (2025) 8 NWLR (Pt 1992) 271*, has significantly altered prior understandings of the legal status of companies in receivership, particularly regarding the powers of directors, employment tenure, and the legal personality of the debtor company. One key suggestion made in this paper*

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is that the Supreme Court of Nigeria should, at the earliest opportunity, reverse its position.

Keywords: *Receiver, Companies, Receivership, Capital, Debt*

1. Introduction

Jurisdiction

The court with exclusive jurisdiction to appoint a receiver and/or manager for companies in Nigeria is the Federal High Court (FHC).¹ However, where the subject matter of receivership would not entail recourse to either the provisions of the CAMA 2020 or any enactment governing the operations of companies, the state High Court may exercise jurisdiction in matters of receivership.²

Appointment

The court or a third-party may appoint a receiver.³ However, this power is not exercised *in vacuo*, it is usually premised on sound principles of law. This includes situations in which the borrower's principal loan balance or interest payments are past due: or the borrower's property or security is in danger.⁴

Despite the fact that it may be less challenging to establish the circumstances surrounding FHC's appointment when the principal amount borrowed by the corporation or the interest is in arrears, it is more difficult to establish the basis for such an appointment premised on the security or property of the company being at risk. This is not unconnected to the imprecision in the definition of the word "jeopardy". The constituent features of the word 'jeopardy' was neither provided in the repealed Companies and Allied Matters

¹ Constitution of the Federal Republic of Nigeria 1999, Cap C23 Laws of the Federation of Nigeria (LFN) 2004 as amended (CFRN 1999), s. 251 (1) (e).

² *Tanarewa (Nig) Ltd v Plastifarm Ltd* [2003] 14 N.W.L.R (Pt 840) 355 at 370, paras B –C.

³ CAMA 2020, ss 552, 553.

⁴ *ibid* s 552 (1) (a) (b); *Okoya v Santili* [1990] 2 N.W.L.R (Pt. 131) 172.

Act 1990,⁵ nor the CAMA 2020. However, some events or happenings which imply that a company or its assets is in jeopardy were set out in *Fasakin v Fasakin*,⁶ thus:

- i. where a company about to be wound up is wholly insolvent and other creditors are threatening action against the company for recovery of their debt;⁷
- ii. where a company was insolvent and its books closed;⁸
- iii. where judgment had been entered against a company and execution was likely to be issue;⁹
- iv. where a company is proposing to distribute among its shareholders a reserved fund which constituted practically its only assets thereby putting the debenture holders' interest at risk;¹⁰ and
- v. where the company's auditors declared in a general meeting and without being challenged by the directors that after providing for liabilities, the company's assets would only cover principal loans secured and that the company's credit and funds were exhausted.¹¹

It should be noted that certain situations still exist that could put the company's assets in danger and prompt the FHC to appoint a receiver. It always depends on the facts of each case. Nevertheless, it should be stated that FHC's employment of a receiver is within the full embrace of its equitable jurisdiction. Therefore, the FHC or any other superior court of record may proceed to employ a receiver

⁵ Cap C20 LFN 2004.

⁶ [1994] 4 N.W.L.R (pt. 340) 597 at 601.

⁷ B F Palmer, *Palmer's company law*. Volume 3 (London: Sweet & Maxwell). Pt 14. 14069.

⁸ *McMahon v North Kent Iron Works Co.* [1891] 2 Ch. 148.

⁹ *Edwards v Standard Rolling Stock* [1893] 1 Ch. 574; *Palmer* (n7) 14069.

¹⁰ *Re: Tilt Cove Copper Co.* [1913] 2Ch. 588; *Palmer* (n7)14069.

¹¹ *Re: Branstein and Majorline Ltd* [1914] 112 L.T. 25.

in convenient situations.¹² It should be stated that the words ‘just and convenient’ have been interpreted as meaning “where is practicable and the interest of justice requires it”.¹³ In other words, the general ground on which court will employ a receiver is preservation or protection of the property for the benefit of persons who have interest in it.

It is usual for debentures or debt instruments to empower the debenture holder to appoint a receiver and/or manager. This position is, in most cases, statutorily confirmed. The appointment of an IP outside of court is not done lightly, just like in the case of employment by FHC. It is typically used when specific occurrences that are previously specified in CAMA 2020 or any other enabling statutes occur. For instance, if the business missed its deadline to pay an interest or premium payment in full or in part within one month of the payment’s due date; or it violates any of the conditions outlined in the debentures or the debentures trust deed that place obligations on it; or any event described in the debentures’ or debentures trust deed’s terms occurs; or the entity is wound up; or any of its creditor issues a process of execution against any of its assets or commences proceedings for winding up of the entity by order of court; or the corporation ceases to pay its debts as they fall due; or any company ceases to carry on business.¹⁴

In addition, it is pertinent that other additional events not in the repealed CAMA, the CAMA 2020 or any other specific statute but provided in the debentures or the debentures trust deed may form the basis for appointment out of court. Hence, it is exigent that a

¹² *Atuanya v Atuanya* [1994] 1 N.W.L.R (pt 322) 572 at 580, para. P; *Uwakwe v Odogwe* [1989] 5 N.W.L.R (pt 123) 562 at 579; *Fasakin v Fasakin* [1994] 4 N.W.L.R (pt. 340) 597; *Okoya & Ors v Santili & Ors* [1990] 2 N.W.L.R (pt 131) 172; *Emodi v Emodi* [2007] 4 N.W.L.R (pt 1024) 412.

¹³ *Edwards & Co v Picard* [1909] 2 KB 903 at 907.

¹⁴ CAMA 2020, s 232 (1) (2); AMCON Act 2010 (as amended), s. 48 (1).

prospective receiver should take certain precautions before acceptance of his appointment.

2. Legal Status of Receiver/Manager

A court-appointed receiver or manager is regarded as a court officer.¹⁵ He/she always performs the responsibilities and wields the powers in compliance with the directives of the court.¹⁶ Therefore, it shall amount to a contempt of court where the receiver appointed out of court is unreasonably hindered from exercising his duties and powers.¹⁷

A receiver appointed out of court is deemed to be an agent of the person or persons on whose behalf he is appointed.¹⁸ The Court of Appeal in *Fadeyibi v I. H. (Beverages) Ltd* appears to have misconstrued the provisions of the law when it pronounced that a receiver named in accordance with a court order is also regarded as an agent of the person or people for whose benefit he was named.¹⁹ It is explicit that where he/she is appointed by court, he/she is deemed an officer of court.²⁰ Section 553 (1) of the CAMA 2020, as relied upon by the court in *Fadeyibi v I. H. (Beverages) Ltd*, is only limited and concerned with the appointments out of court.

However, the deemed status of a receiver appointed out of court as provided under sections 552 and 553 of CAMA 2020, are rebuttable being default provisions. In other words, the latter provision in the

¹⁵ CAMA 2020, s. 552 (2).

¹⁶ CAMA 2020, s 552 (2); *Dagazau v Bokir Int'l Co. Ltd* [2011] 14 NWLR (Pt. 1267) 261 at 330, paras B – C; *Jukok Int'l Ltd v Diamond Bank Plc* [2016] 6 N.W.L.R (Pt 1507) 55 at 94.

¹⁷ O E J Abugu, 2014. *Company securities: law and practice* (2 edn Lagos: MIJ Professional Publishers Limited) 231.

¹⁸ CAMA 2020, s. 553 (1); *Fadeyibi v I. H. (Beverages) Ltd* [2013] 4 N.W.L.R (Pt. 1344) 353.

¹⁹ *Fadeyibi v I. H. (Beverages) Ltd*, *ibid*, 374.

²⁰ CAMA 2020, s. 552 (2); Palmer (n7) 14072.

deed instrument takes precedence if the deed instrument expressly declares the status of the IP.²¹ Even though he is considered to be acting as a representative for the person or people on whose behalf he was appointed, where also appointed manager of all or a portion of a business's undertaking is in a fiduciary relationship with the company, and is obligated to act in all transactions with it or on its behalf with the greatest amount of integrity.²²

The mortgagee's appointment of a receiver and/or manager is deemed to be on the mortgagor's behalf under common law, and as a result, the mortgagor may file a claim against the mortgagee for any damages caused by the receiver's carelessness.²³ Simply put, while the receiver and/or manager is entitled to take possession of the company's asset and operate the business on behalf of the debenture holder, the debenture holder assumes the position of being virtually a mortgagee in possession through the receiver and/or manager and as a result is accountable or responsible for the commitment made by the manager or receiver in carrying out the operation. This position under common law is unsatisfactory.²⁴

3. Effects of Appointment of a Receiver

The effects of an appointment of a receiver are numerous. This includes:

i. Legal Status of a Company

The company's legal status is not destroyed by the appointment of a receiver. As a result, when a receiver is appointed, the company retains both its legal identity and ownership of the products that are

²¹ CAMA 2020, s. 552 (2); Palmer (n7) 14080/1.

²² CAMA 2020, s 553 (1); AMCON Act 2010 (as amended), s 48 (6).

²³ *Halsbury's Laws of England*. 1988. 4th ed. reissue, vol 7(2). 913, para 1157.

²⁴ K Aina, Rethinking the Duties of a Receiver and Powers of Directors of Companies in Receivership Under the Nigerian Law (2015) *The Gravitas Review of Business and Property Law*; 6 (2): 62 – 74.

under receivership.²⁵ The business is still operational.²⁶ The legal personality of a company becomes extinct only upon its winding up and dissolution.²⁷

Thus, the company retains its title to the goods in receivership; its legal personality intact and the company has a right to ensure that its property is not dissipated. To this end, a company under receivership has a legal right to seek injunctive reliefs so as to protect its assets.²⁸ However, it is debatable whether the right to request any injunctive relief against a receiver and/or manager appointed in accordance with the AMCON Act, which forbids the institution of actions against the debtor company or receiver and/or manager for a year or such extended period from the date of publication of the notice of election to manage the debtor company's affairs.²⁹

However, in *Dagazu Carpets Limited v Bokir International Company Limited*,³⁰ the Supreme Court of Nigeria appeared to have made a pronouncement that takes away the powers of a company in receivership. For purposes of emphasis and clarity, the Supreme Court held that “where a company is in receivership, as the appellant in this case, all its acts and powers can no longer be exercised by it personally, but through the receiver.”³¹ This decision is unsatisfactory. It is not in all cases that a receiver is appointed for

²⁵ *Solar Energy Advanced Power Systems Ltd (S.P.E.A.S) v Ogunnaike* [2008] 14 N.W.L.R. (Pt. 1106) 1 at 12, para. G; *Christlieb Plc v Majekodunmi* [2008] 16 N.W.L.R. (Pt. 1113) 324 at 345, paras C – E; *Union Bank of Nigeria Ltd v Tropic Foods Ltd* [1992] 3 N.W.L.R. (Pt. 228) 231.

²⁶ *Remalo Ltd v National Bank of Nigeria Ltd* [2003] 16 N.W.L.R. (Pt. 846) 235 at 243, para. F.

²⁷ *Commercial Bank (Credit Lyonnais) Nig. Ltd v Okoli* [2009] 5 N.W.L.R. (Pt. 1135) 446 at 461, paras F-G; *Ehiadimhen v Musa* [2000] 8 N.W.L.R. (Pt. 669) 540; (2000) 4 SC (Pt. 11) 166 at 184.

²⁸ *Union Bank of Nigeria Ltd v Tropic Foods Ltd* [1992] 3 N.W.L.R. (Pt. 228) 231 at 246, para. A.

²⁹ AMCON Act 2010 (as amended), s 48 (7) (a).

³⁰ (2025) 8 NWLR (PT 1992) 271.

³¹ *ibid* at 298, para-G.

the whole or substantially whole of the property of the debtor company. It therefore sounds incongruous for a receiver appointed for an infinitesimal part of the property of the debtor company would now exercise powers over all the affairs of the company.

ii. Powers of Directors of the Company

A company's board of directors is given the authority to run its business.³² The question of whether a corporation's directors can continue to exercise control over operations, assets, or undertakings of the company while it is in receivership has been debated. According to the majority decision, when a court appoints an IP during a receivership, the IP effectively takes over the management and direction of the company's affairs from the directors. As a result, the directors are no longer able to sign contracts on the company's behalf or exercise any kind of control over any of the company's property or assets in relation to the specific assets to which the security is attached.

The company's authority and the directors' authority to conduct business during the appointment period are superseded by the IP's employment.³³ Suffice to state that with the appointment of a receiver and/or manager, the powers of the company and the authority of the directors cease only in respect of those assets within the scope of the charge but in respect of the assets that are not within the scope of the charge or where the receiver has refused to act, the company and the directors retain their powers.³⁴ Simply put, when a receiver or manager is appointed, the company's directors' jurisdiction over the company's assets that are under management is

³² CAMA 2020, s 89 (1), (3).

³³ *Moss Steamship Co v Whinney* [1912] A C 254; O J Orojo, *Company law and practice in Nigeria* (5th edn, London: LexisNexis Butterworths Tolle. 2008) 439 – 440; Palmer (n7) 14072.

³⁴ CAMA 2020, s 556 (3); *Omojasola v PlissonFisko (Nigeria) Ltd* [1990] 5 N.W.L.R (Pt. 151) 434; *Fadeyibi v I. H. (Beverages) Ltd* [2013] 4 N.W.L.R (Pt. 1344) 353 at 373, paras F – H.

suspended.³⁵ It is important to state that the powers of a receiver appointed pursuant to the AMCON Act is exercisable without regards to the distinction between the assets in receivership and the ones not in receivership.³⁶

It will be reasonable to say that, until an IP in receivership is appointed in accordance with the AMCON Act, his appointment does not completely terminate the board of directors' authority over a firm. The directors of a company still continue to exercise powers and duties in the interest of the company, subject however to the direction of the receiver and/or manager in respect of the assets in receivership. For example, the appointment of an IP does not prevent the entity or its directors from suing or being sued for circumstances that are not within their control.³⁷ But the Supreme Court in *Gbedu v Itie*,³⁸ in determination of a case bordering on winding up, pronounced that the appointment of a receiver terminates the employment of directors, secretary and officers of the company. This paper disagrees with this general pronouncement of the apex court in Nigeria to the extent that directors of the company do not become *functus officio*.³⁹

During a receivership, the directors' authority is only momentarily suspended.⁴⁰ The directors who are still in office may continue to

³⁵ *Standard Printing & Publishing Co Ltd v N. A. B Ltd* (2003) FWLR (Pt. 137) 1097 at 1109, para C; *Intercontractors Nig. Ltd v N. P. F. M. B.* (1983) 1 NSCC 759; *U.B.N Plc v David Lab Ltd* [2014] All FWLR (Pt. 714) 157 at 171, paras F – G; *Unibiz Nig Limited v C.B.C.I Ltd* (2003) FWLR (Pt. 152) 71; *Solar Energy Advanced Power Systems Ltd (S.P.E.A.S) v Ogunnaike* [2008] 14 N.W.L.R (Pt. 1106) 1; *Dagazau v Bokir Int'l Co. Ltd* [2011] 14 NWLR (Pt. 1267) 261 at 325 – 326.

³⁶ AMCON Act 2010 as amended, s 48 (3).

³⁷ *UBA Trustees Ltd v Nigergrob Ceramic Ltd* [1987] 3 N.W.L.R (pt. 62) 600 at 612; O J Orojo, 2008. *Company law and practice in Nigeria*. 5th ed. London: LexisNexis Butterworths Tolle. 440.

³⁸ (2020) 3 NWLR (Pt. 1710) 104 at 126, paras. C – E; 127 para. A.

³⁹ CAMA 2020, s 553 (1).

⁴⁰ *Central London Electricity Ltd v Berners* [1985] 1 KB 160.

serve as directors of the company over those company assets not covered by the debenture as long as the company is a going concern and is neither wound up nor dissolved. However, when a receiver is appointed in relation to the assets included in and charged under the debenture document, the directors' authority to manage the company's assets is terminated.⁴¹ The receiver is the only person with the authority to bring or defend legal actions in the name of the firm during the receivership, in accordance with the powers granted to him by CAMA 2020.⁴² There are some circumstances where the directors can maintain an action under the company's name. For instance, where the receiver neglects or refuses or fails to take action to protect the interest of the company.

iii. Employment Contracts

The hiring of an IP in receivership by court, automatically terminates the employment of the company's employees and they may claim damages for breach of contract even when subsequently re-employed by the receiver.⁴³ The apex court in *Gbedu v Itie* held that the appointment receiver/manager automatically terminates all existing contracts of employment.⁴⁴ However, this study disagrees with the sweeping pronouncement of the Supreme Court as it is not mandatory in all cases that the order of appointment by court will include termination or discharge of all existing contracts of employment. More so, the appointment does not extinguish life of a legal entity.⁴⁵

⁴¹*Newhart Developments v Co-Op Commercial Bank* [1978] 2 All ER 901; *Jukok Int'l Ltd v Diamond Bank Plc* [2016] 6 N.W.L.R (pt. 1507) 55 at 96.

⁴² CAMA 2020, s 556.

⁴³ *Gbedu v Itie* [2020] 3 NWLR (Pt. 1710) 104 at 124, para. H.

⁴⁴ n43

⁴⁵ *Solar Energy Advanced Power Systems Ltd (S.P.E.A.S) v Ogunnaike* [2008] 14 N.W.L.R (Pt. 1106) 1 at 12, para G; *Christlieb Plc v Majekodunmi* [2008] 16 N.W.L.R (Pt. 1113) 324 at 345, paras C – E; *Pharmatek Industries Ltd v Trade Bank (Nig.) Ltd* [1997] 7 N.W.L.R (Pt 514) 639.

Where the appointment is out of court, therefore regarded as agent for the company, the appointment does not automatically terminate contracts of employment previously made and subsisting between the company and its employees.⁴⁶ However, this legal tenet regarding the impact of the appointment of a receiver and/or manager as it relates to employment contracts in a company is subject to exceptions. The first exception is that where the appointment is accompanied by a sale or ‘hiving down’ of the business of the company.⁴⁷ The second exception occurs where simultaneously with or very soon after his appointment, the receiver and/or manager enters into a new agreement with a particular employee that is inconsistent with the old contracts. In other words, the existing contract of employment is superseded and *ex hypothesi* terminated.⁴⁸ The third exemption is where keeping the positions of the staff would go against the receiver’s responsibilities as a manager and receiver.

It is arguable as to what the effect of the appointment of a receiver will be on the existing contracts of employment if he is acting as an agent for the debenture holders. Although there is no settled precedence, the preponderance of opinion,⁴⁹ is that such appointment will terminate the company’s existing contracts of employment. In *Dagazau v Bokir Int’l Co. Ltd*, the court pronounced that “... the powers of the board automatically vest in the *de facto* sole

⁴⁶ B F Palmer, *Palmer’s company law*. Volume 3. London: Sweet & Maxwell. Pt 14. 14088; H Picarda, 1984. Receiver and on demand debentures. 5 *Bus L Rev.* 104; O I Smith, 2001. *Nigerian law of secured credits*. Lagos: Ecowatch Publications (Nigeria Limited). 337.

⁴⁷ *Re Foster Clark Ltd* [1966] 1 All ER 43.

⁴⁸ *Griffiths v Secretary of State for Social Services* [1974] QB 468.

⁴⁹ *Dagazau v Bokir Int’l Co. Ltd* [2011] 14 NWLR (Pt. 1267) 261 at 325 – 326, paras H – A; Picarda, H. 1984. Receiver and on demand debentures. 5 *Bus L Rev.* 105 – 106.

administrator who determines the continuity of the secretary and indeed, of all other staff”.⁵⁰

4. Conclusion and Recommendation

Receivership is one of the vehicles open to a debenture holder or creditor to enforce a proprietary security or to recover debt. Reliance on this vehicle is provided for in the CAMA 2020, and other extant statutes, and debt instruments. But, in practice, the appointment of a receiver, exercise of powers by a receiver *vis-à-vis* the company, have been fraught with challenges and disputations. These obvious intrigues have been compounded by the decisions of the Supreme Court in *Gbedu v Itie*,⁵¹ and *Dagazu Carpets Limited v Bokir International Company Limited*,⁵² which decisions took away the powers of the company and its organs when in receivership.

Against the above, it is the suggestion of this paper that the Supreme Court should reverse and set aside its decisions,⁵³ as it relates to the legal status of the debtor company, powers of directors, and contracts of employment. The position of the law is that the legal status of the company and the powers of directors remain intact over the part of the debtor’s property that is not subject of the receivership.⁵⁴

⁵⁰ *Dagazau* (n49) at 325 – 326.

⁵¹ [2020] 3 NWLR (Pt. 1710) 104

⁵² (2025) 8 NWLR (PT 1992) 271.

⁵³ *Gbedu v Itie*, and *Dagazu Carpets Limited v Bokir International Company Limited*.

⁵⁴ CAMA 2020, s 556 (4).