



Control Vs. Challenge: Who Speaks For A Company In Receivership?

The Nigerian Supreme Court Recalibrates The
Limits Of Receiver Authority In *Neconde Energy
Limited v. FbnQuest Merchant Bank Limited & Ors.*

Introduction

When a company enters receivership, a familiar assumption often follows: control has shifted, the receiver is in charge of the named asset(s), and the directors must step aside. But what happens when the very basis of that control is itself under challenge? What happens when the dispute is not simply about managing charged assets, but about whether the receiver should be there at all?

That is the difficult and commercially significant question that lies at the heart of ***Neconde Energy Limited v FBNQuest Merchant Bank Limited & Ors.***¹ At one level, the case arose from a major secured lending and enforcement dispute involving alleged default, the enforcement of security, and the appointment of a Receiver/Manager over valuable oil and gas

interests, including Neconde's interest in OML 42 JV in Delta State, Nigeria. The Lenders had approached the Federal High Court of Nigeria for far-reaching reliefs tied to the enforcement of transaction security and the recovery of very substantial outstanding debt. The approach adopted by the Nigerian Courts in resolving these issues forms the basis of this commentary.



Background of the Dispute

The dispute arose from a structured financing arrangement involving a consortium of Lenders, with FBNQuest Merchant Bank Limited acting as the Facility Agent (FA), and First Trustees Limited as the Global Security Trustee (GST). The transaction was governed by a Common Terms Agreement (CTA) dated 8 December 2022 and supported by a suite of security documents executed across the obligor group. As part of that structure, Neconde Energy Limited provided security over its interest in the OML 42 Joint Venture and related petroleum assets, effectively placing a significant portion of its revenue-generating assets within the Lenders' security net.

The Lenders' position was that events of default had occurred under the financing documents, thereby triggering their contractual enforcement rights. The exposure was substantial. The proceedings before the Federal High Court referenced outstanding indebtedness in excess of USD 1.012 billion and approximately NGN 430 billion as of 30 September 2025, with continuing accrual of interest.

Following the alleged default, the security structure was activated. On 21 August 2025, the security trustee appointed a Receiver/Manager over the charged assets, with powers extending to the control, management, and potential realisation of those assets for the purpose of debt recovery. The appointment was subsequently registered with the Corporate Affairs Commission (CAC), and practical steps were taken to assume control over the company's operational and asset base.

In parallel, the Lenders commenced proceedings at the Federal High Court, Lagos, by way of Originating Summons, seeking wide-ranging reliefs. These included declarations affirming the occurrence of default, confirmation of their entitlement to enforce the transaction security, validation of the Receiver's appointment and powers, and recognition of their right to take control of, and realise, the charged assets toward liquidation of the outstanding indebtedness.

However, the company did not accept the enforcement narrative as settled. It disputed the existence and effect of the alleged default, questioned whether the conditions for enforcement had arisen, and, by necessary implication, challenged the validity and scope of the receivership itself. In other words, the issue was not simply how the assets were to be managed, but whether the Lenders were entitled to assume control in the first place. It was against this backdrop that a distinct procedural conflict emerged at the appeal. While the company, acting through its board of directors, appointed its own counsel to defend the proceedings, the Receiver/Manager took the position that, by reason of the receivership, only he had the authority to represent the company in matters relating to the charged assets.

That conflict, between control under receivership and the company's residual authority to act in its own defence, set the stage for the central question that ultimately reached the Nigerian Supreme Court.

The Real Issue

Against the background highlighted above, the dispute moved beyond questions of enforcement into a more fundamental issue concerning authority and representation. The immediate question was whether, following the appointment of a Receiver/Manager, the power to represent the company in court rested exclusively with the Receiver, or whether the company, acting through its board, retained any residual authority to appoint counsel in proceedings relating to the charged assets.

However, that question was inseparable from a deeper concern. The proceedings before the court did not merely involve the management

or realisation of assets under an accepted receivership. They also placed in issue the validity of the alleged default, the Lenders' entitlement to enforce the security, and, by implication, the legitimacy and scope of the receivership itself.

In that context, the issue required a distinction to be drawn between the exercise of control over charged assets and the ability to challenge the basis of that control. Common law authorities have recognised that while insolvency or enforcement mechanisms may displace management powers, they do not necessarily extinguish the company's legal personality or its residual capacity to question the validity of

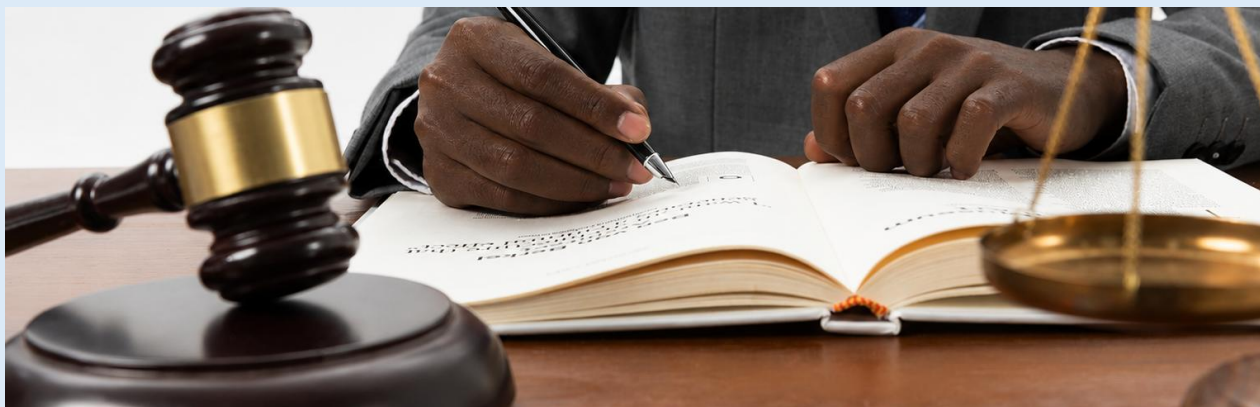
those mechanisms. See the English Case of **Re Union Accident Insurance (1972) 1 All ER 1105 (Union Accident Insurance)**² and the **Nigerian Authority of O.B.I. Ltd v UBN Plc.**³

The question, therefore, was whether the statutory powers of a Receiver extend to controlling the company's response in proceedings that directly challenge the existence or scope of those powers, or whether, in such circumstances, the company must retain an independent ability to act in its own defence. It was this distinction that framed the decisions of both the Court of Appeal and the Supreme Court.

² In *Re Union Accident Insurance (1972) 1 All ER 1105 (Union Accident Insurance)*, the English courts have long held that, upon the appointment of an insolvency office-holder, directors are not entirely displaced but retain only such residual powers as are not assumed by the officeholder under the applicable statutory framework or order of court

³ (2009) 3 NWLR (Pt. 1127) 129; The Supreme Court in Nigeria relied on it for the point that even though the directors' powers to dispose of assets may cease once the company is in receivership, the restriction is not absolute. Directors may still act in respect of matters outside the receiver's control, including where the validity or propriety of the receivership is being challenged.

The Decision of the Court of Appeal



The proceedings before the Court of Appeal arose from a procedural impasse encountered during the hearing of the appeal, where two sets of senior counsel announced appearances for Neconde Energy Limited. Despite efforts by the Court to resolve the issue, the conflict persisted, prompting the Receiver/Manager of the company's charged assets to bring a formal application seeking a determination of the proper legal representation of the company.

The Receiver's application, brought pursuant to Order 6 Rule 1 of the Court of Appeal Rules and anchored on section 556 of the Companies and Allied Matters Act 2020, and the Eleventh Schedule thereto, sought, among other reliefs, the

disqualification of Chief Wole Olanipekun, SAN, and his team from representing the company under receivership. The central question formulated for determination was whether counsel not appointed by the Receiver/Manager had the competence and authority to represent the company in proceedings relating to its charged assets.

In advancing the application, counsel for the Receiver argued that the company, by executing the Deed of Charge and the related security documents, had vested extensive powers in the Receiver, including the authority to act on its behalf in relation to the charged assets. Relying on section 556(1) - (3) of CAMA 2020, it was contended that upon appointment, the Receiver

assumes control of the charged assets and displaces the powers of the directors in respect of those assets. Counsel further relied on authorities such as ***Dagazau v. Bokir International Co. Ltd***⁴ and ***Intercontractors (Nig.) Ltd v. U.A.C. Of Nigeria Ltd***⁵ to support the proposition that a Receiver becomes the de facto Administrator of the company's affairs in relation to the charged assets and is solely competent to institute or defend proceedings concerning those assets.

In response, counsel for the company resisted the application, arguing that the issue of representation could not be divorced from the constitutional right to fair hearing under section 36 of the 1999 Constitution.

⁴ (2011) 14 NWLR (Pt. 1267) 261

⁵ (1988) 2 NWLR (Pt. 76) 303



It was contended that disqualifying counsel appointed by the company would effectively prevent it from defending the proceedings, particularly in circumstances where the underlying enforcement and the Receiver's authority were themselves in dispute. The company maintained that the Receiver's powers could not extend to controlling its legal representation in a manner that undermines its ability to challenge the basis of the receivership.

In resolving the issue, the Court of Appeal adopted a strict interpretation of the statutory framework governing receivership. The Court held that the position of the law is settled: upon the appointment of a Receiver/Manager, the

powers of the directors in relation to the charged assets are suspended and vested in the Receiver for the duration of the receivership. Relying on section 556 of CAMA 2020 and the Eleventh Schedule, the Court emphasised that the Receiver assumes the essential functions of management and becomes the only recognised authority to act for the company in respect of those assets, including the conduct of legal proceedings. The Court further held that although the right to counsel of choice is constitutionally recognised, it must yield where the issue of representation is governed by statute and does not result in a denial of fair hearing.

On that basis, the Court concluded that counsel not appointed by the Receiver lacked the competence to represent the company in the appeal insofar as it related to the charged assets. It accordingly granted the application, disqualified Chief Wole Olanipekun, SAN, and his team from further representation, and struck out the processes filed by them. The Court's decision reflects a firm adherence to the orthodox position that receivership operates to transfer control, including litigation authority, from the directors to the Receiver in respect of the assets under receivership.

The Decision of the Supreme Court

The appeal before the Supreme Court arose from the decision of the Court of Appeal, which had disqualified the Appellant's counsel on the basis that, following the appointment of a Receiver/Manager, only the Receiver could appoint counsel for the company. The Appellant challenged that position, arguing that it undermined its ability to defend proceedings in which the validity of the receivership itself remained in dispute. The issue before the Court was framed narrowly: 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 could represent the company, to the exclusion of the company acting through its board.

The Appellant argued that the Court of Appeal adopted an overly rigid interpretation of section 556 of the Companies and Allied Matters Act 2020. It maintained that the Receiver's powers cannot extend to controlling the company's legal representation in proceedings that directly challenge the basis of those powers. Emphasis

was placed on the right to fair hearing and the need to preserve the adversarial nature of proceedings. Reliance was placed on ***O.B.I. Ltd v. U.B.N. Plc (2009)***⁶, to support the position that receivership does not extinguish the company's residual capacity to act where necessary.

In response, the Respondents argued that the legal position was settled. By virtue of section 556 of CAMA 2020 and the Deed of Charge, control over the charged assets and the authority to act in relation to them had vested in the Receiver. They contended that the directors were thereby displaced, and that the right to counsel of choice is not absolute in civil proceedings.

In resolving the issue, the Supreme Court affirmed the orthodox position that upon the appointment of a Receiver, the powers of directors in relation to charged assets are displaced and vested in the Receiver. The Court relied on authorities such as ***Intercontractors (Nig.) Ltd v. U.A.C. (Nig.) Ltd***⁷, confirming that a Receiver assumes control for the purpose of realising the security.

However, the Court drew a crucial distinction. It held that the restriction on directors' powers is not absolute and does not extend to situations where the validity, scope, or propriety of the receivership itself is being challenged. In such cases, the company retains a residual authority to act through its directors. Adopting ***O.B.I. Ltd v. U.B.N. Plc*** (supra), the Court emphasised that receivership does not extinguish the company's corporate personality or its ability to protect its interests.

Applying these principles, the Court found that the underlying proceedings went beyond asset management and directly questioned the legality of the enforcement and the Receiver's appointment. In those circumstances, allowing the Receiver to control the company's representation would create an inherent conflict. The Court therefore held that the Appellant was competent to appoint its own counsel. The appeal was allowed, the decision of the Court of Appeal set aside, and the Appellant's right to independent representation restored.

⁶ 3 NWLR (Pt. 1127) 129

⁷ (1988) 2 NWLR (Pt. 76) 303

Commentary on the Case

This decision is significant for at least four reasons.

First, it introduces an important qualification to what has long been treated as an orthodox position in receivership. It is settled that the appointment of a receiver displaces the powers of directors in relation to charged assets.⁸ However, the Supreme Court makes it clear that this displacement is not absolute. By recognising that directors retain residual authority where the validity or scope of the receivership itself is in dispute, the Court restores a necessary balance between creditor enforcement and corporate autonomy. This aligns with the earlier decisions in

Intercontractors v. N.P.F.M.B.⁹ and ***Pharmatek Ind. Ltd. v. Trade Bank (Nig.) Plc.***¹⁰ This clarification is particularly significant in complex financing structures, where enforcement actions are often contested, and the boundaries of control are not always clear, especially when a part or a significant portion of the company's assets are charged.

Secondly, the decision reflects a clear concern for procedural fairness. The Court was evidently alive

to the practical implications of allowing a Receiver, whose authority is derived from the secured creditors, to control the company's legal representation in proceedings challenging that very authority. Such an arrangement would create an inherent conflict and risk undermining the adversarial process. Even though the Court did not frame its reasoning in expansive constitutional language, its approach aligns with the principle that the right to be heard must be meaningful and not merely formal. In this respect, the decision reinforces the idea that control of assets does not automatically translate into control of the company's voice to speak and be heard.

Thirdly, the decision invites a closer examination of the statutory framework, particularly section 556(3) of the Companies and Allied Matters Act 2020 and Article 4 of the Eleventh Schedule. Section 556(3) extends the powers of a Receiver appointed for the whole or substantially the whole of a company's property to include those set out in the Eleventh Schedule, including the power to appoint Solicitors and other professionals. This raises a critical question:

Does a challenge to the validity or propriety of the Receiver's appointment fall within the "functions" in relation to the charged assets for which the Receiver may appoint counsel?

On one view, the statutory language is sufficiently broad to cover all proceedings relating to the charged assets. However, such an interpretation risks conflating the exercise of power with the legitimacy of the exercise of that power. If the Receiver's authority to appoint counsel extends even to proceedings challenging his own appointment, the Receiver would effectively control the company's response to that challenge. The Supreme Court appears to have resolved this tension by drawing a distinction, albeit implicitly, between matters falling within the operational control of the Receiver and those that go to the validity of the receivership itself. Seen in this light, proceedings that challenge the existence or scope of the receivership cannot properly be regarded as part of the Receiver's "functions." Rather, they fall within the residual authority of the company acting through its directors.

⁸ In *Wema Bank Plc & Ors v Onafowokan & Ors* (2004) LPELR-7444(CA), the Court held thus: 'where a receiver or manager is appointed for the whole or substantially the whole of a company's property, the powers conferred on him by the debentures by virtue of which he was appointed shall be deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in the Eleventh Schedule to this Act.' Reference was made to Schedule 11 paragraph 5 which gives the receiver power to bring or defend any action or other legal proceedings in the name and on behalf of the company.' This position was more recently reaffirmed in *Adeogun-Phillips v Gateway Portland Cement Ltd & Anor* (2024) LPELR-62108(CA). A similar approach is reflected in comparative jurisprudence. In *Attorney-General v Blumenthal* 1961 (4) SA 313 (T), the South African court held that upon liquidation, directors are divested of their powers and control of the company passes to the liquidator, who effectively steps into the position previously occupied by the directors.

⁹ (1988) 2 NWLR (Pt. 76) 280

¹⁰ (1997) 7 NWLR (Pt. 514) 639



Fourthly, the decision highlights an emerging tension in Nigerian insolvency jurisprudence between strict enforcement rights and the need to preserve the integrity of the legal process. While the Court reaffirmed established principles on the effect of

receivership, it did not fully engage with the broader implications of its reasoning. For instance, could this decision encourage companies to frame disputes as challenges to receivership in order to regain control of litigation? And how should courts distinguish

between genuine challenges to the validity of a receiver being appointed and tactical attempts to circumvent its effects? These questions remain open and will likely arise in future cases.

Conclusion



In conclusion, the decision brings welcome clarity to the limits of receiver authority, particularly in drawing a distinction between control over assets and the ability to challenge that control. At the same time, it introduces a degree of uncertainty as to how far the residual powers of directors may extend in practice. That uncertainty, however, is not without direction. The better view, and one that appears consistent with both principle and comparative jurisprudence, is that the law should continue to recognise a narrow but

essential space within which a company, acting through its directors, may challenge the validity, scope, or propriety of a receivership without interference from the receiver.

Going forward, courts should be careful to confine this residual authority to genuine challenges to the legitimacy of the receivership, while guarding against its use as a tactical device to undermine valid enforcement of the appointment of the insolvency practitioner.

Striking this balance will be critical. It ensures that receivership remains an effective tool for creditor recovery, while preserving the integrity of the judicial process by guaranteeing that such power is open to meaningful scrutiny. How the courts refine and apply this distinction will play a defining role in the continued development of receivership, and by extension, insolvency law, in Nigeria.

For further enquiries, reach out to contact@strenandblan.com

About Stren & Blan Partners

Stren & Blan Partners is an innovative and dynamic Law Firm with a compelling blend of experienced lawyers and energetic talents. We are focused on providing solutions to our client's business problems and adding value to their businesses and commercial endeavours. This underpins our ethos as everything we do flows from these underlying principles.

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our client's business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence.

The Authors



**Amala
Umeike**

Partner



**Sesugh
Famave**

Senior Associate



**Babatunde
Oyewole**

Associate



**Ebenezer
Ogunwole**

Associate



+234 (0)702 558 0053
3 Theophilus Orji Street, Off Fola Osibo Road,
Lekki Phase 1, Lagos, Nigeria

www.strenandblan.com
contact@strenandblan.com
[in](#) [X](#) [@](#) @strenandblan