

# **PROTECTING BUSINESSES FROM PROCEDURAL OVERREACH: REFLECTIONS ON THE SUPREME COURT'S DECISIONS IN NESTOIL & ANOR. V. FBNQUEST MERCHANT BANK LTD. & ORS<sup>1</sup>**

## **Introduction:**

The recent decisions of the Supreme Court in the protracted dispute involving Nestoil Limited, Neconde Energy Limited, FBNQuest Merchant Bank Limited and First Trustees Limited represent a significant judicial intervention in the evolving intersection between debt enforcement, receivership practice, corporate governance and constitutional fair hearing. Beyond the immediate commercial interests of the parties, the judgments provide important guidance on the limits of judicial discretion in granting ex parte reliefs, the scope of powers exercisable by receivers and managers, and the fundamental right of corporate entities to be heard through counsel of their choice.

## **Brief Facts of the case**

The dispute arose from debt recovery proceedings commenced by FBNQuest Merchant Bank Limited and First Trustees Limited against Nestoil Limited and Neconde Energy Limited over alleged indebtedness arising from financing arrangements relating to oil and gas assets and operations. The lenders claimed that the companies owed in excess of US\$1.1 billion under various credit facilities and related obligations.

In October 2025, the Federal High Court, Lagos, granted an ex parte Mareva injunction freezing the assets, bank accounts and shares of Nestoil and Neconde across several financial institutions pending determination of the dispute. The companies subsequently challenged the order, contending that it had lapsed by operation of law after fourteen days once they filed applications seeking its discharge.

On 20 November 2025, the Federal High Court agreed with the companies and held that the ex parte order had expired and was no longer subsisting. However, upon an application by the lenders, the Court of Appeal subsequently granted what it described as a restorative ex parte injunction, effectively reinstating the receivership arrangement and returning control of the companies' assets and operations to a receiver-manager appointed by the lenders. The appellate court also issued consequential orders affecting the ongoing proceedings before the Federal High Court.

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<sup>1</sup> SC/CV/48B/2026

A further issue arose as to whether the boards of Nestoil and Neconde could appoint legal practitioners to challenge the receivership, or whether only the receiver-manager possessed such authority. The Court of Appeal held that the companies lacked the power to appoint their own counsel once the receivership took effect. Dissatisfied, Nestoil and Neconde appealed to the Supreme Court, challenging both the appellate court's ex parte restorative orders and its decision restricting the companies' right to retain counsel of their choice. The Supreme Court ultimately set aside the Court of Appeal's orders, holding, among other things, that the appellate court exceeded its jurisdiction and that companies challenging the validity of a receivership retain the right to appoint independent legal representation to defend their interests.

### **Judicial Restraint and the Limits of Ex-Parte Relief**

One of the most consequential aspects of the Supreme Court's intervention was its disapproval of the expansive ex parte orders issued by the Court of Appeal, which had effectively restrained the operations and access to assets of the affected companies pending determination of substantive issues. The apex court reaffirmed the long-established principle that ex parte orders are exceptional remedies intended only to preserve the subject matter of litigation in circumstances of genuine urgency. Such orders are not designed to confer substantive advantages on one party or determine contested rights before the opposing party has been heard. By setting aside the orders, the Supreme Court underscored that appellate courts must exercise caution when invited to grant far-reaching interim reliefs capable of disrupting ongoing business operations or substantially determining the rights of litigants before an inter partes hearing. The decision serves as an important reminder that the pursuit of debt recovery, however legitimate, must remain subject to procedural fairness and judicial discipline.

### **Receivership Does Not Extinguish Corporate Personality**

Equally significant is the Court's pronouncement on the legal status of companies placed under receivership. The dispute raised a critical question: ***where the validity of a receiver's appointment is itself being challenged, can the receiver exclusively determine who represents the company in litigation concerning that very appointment?***

The Supreme Court answered this question in the negative. The Court recognised that although a receiver may be vested with extensive managerial powers over charged assets, the appointment does not extinguish the separate legal personality of the company. Nor does it automatically strip the company

of every residual power necessary to protect its legal interests. The Court's reasoning reflects a practical appreciation of corporate jurisprudence. To permit a receiver whose appointment is under challenge to dictate the company's legal representation would create an obvious conflict of interest and undermine the integrity of adversarial proceedings. Such an arrangement would risk allowing one side of a dispute to indirectly influence both the prosecution and defence of the same matter.

Accordingly, the Supreme Court affirmed that a company retains the right to challenge a receivership and to engage legal practitioners for that purpose where the circumstances require. This position reinforces the constitutional guarantee of fair hearing and preserves meaningful access to justice for corporate entities.

### **Fair Hearing as the Cornerstone of Commercial Litigation**

A recurring theme throughout the Supreme Court's decisions is the centrality of fair hearing. The Court's analysis demonstrates that commercial disputes, regardless of their scale or complexity, remain subject to constitutional safeguards. Financial institutions, trustees, debtors and corporate obligors are all entitled to have their disputes determined through procedures that are transparent, balanced and consistent with due process. The judgments therefore reject any procedural framework that would place one litigant in a position of overwhelming procedural dominance or deprive another party of a meaningful opportunity to present its case. The court's position is particularly important in debt enforcement disputes, where the commercial consequences of interim orders can be immediate and substantial. The Supreme Court has signalled that courts must remain vigilant against procedural mechanisms that effectively determine disputes before trial under the guise of interim protection.

#### **Implications for Lenders, Borrowers and Corporate Nigeria**

The practical implications of these decisions extend well beyond the parties involved. For lenders and security trustees, the judgments reaffirm the legitimacy of receivership as an enforcement tool while simultaneously emphasising that enforcement powers must be exercised within constitutional and procedural limits. For borrowers and companies under financial distress, the decisions provide assurance that receivership does not extinguish their legal personality or their ability to seek judicial review of enforcement measures.

For the judiciary, the judgments reinforce the need for restraint when granting ex parte reliefs capable of producing irreversible commercial consequences. Perhaps most importantly, the decisions strengthen confidence in Nigeria's legal system by demonstrating that commercial expediency cannot override fundamental principles of justice.

## **Conclusion**

The Supreme Court's intervention in the Nestoil-FBNQuest litigation is notable not merely because of the substantial sums involved, but because of the legal principles reaffirmed. The judgments stand as a robust defence of due process, corporate autonomy and judicial accountability. In an era where complex financing structures and sophisticated security arrangements increasingly dominate commercial transactions, the Court has made it clear that enforcement rights, however extensive, must remain subject to the constitutional imperatives of fair hearing and procedural fairness. The enduring significance of these decisions lies in their affirmation that the administration of justice must never sacrifice fairness at the altar of expediency. In preserving that balance, the Supreme Court has delivered an important contribution to Nigerian commercial jurisprudence.

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***For further insights, detailed advice, and/ or matters relating to corporate governance, debt recovery, receivership, and commercial dispute resolution, please contact us via: [contact@euphemiallp.com](mailto:contact@euphemiallp.com); (+234)8083000163.***

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