

ENFORCEMENT AND EXECUTION OF COURT ORDER AND JUDGMENT:

PRACTICE AND PROCEDURE

1.0. INTRODUCTION

Victory from Judgment in court in Nigeria is not the final. The Judgment Creditor does not automatically reap the fruits of his or her victory. It is incumbent upon the Judgment Creditor to take up the responsibility to initiate the legal machinery of the judicial system for the enforcement of the judgments so as to claim the fruits of his victory. It is necessary to understand and master the legal requirement and procedures necessary to enforce the said judgment.

This paper shall within the limited time schedule for this wide area of law examine the meaning and types of Judgments, applicable common statutes that govern enforcement of judgment, procedures and challenges against the procedure within Nigeria legal system.

2.0. KEYWORDS: ENFORCEMENT/EXECUTION OF JUDGMENT, JUDGMNETS/ORDERS AND ITS TYPES, JUDGMENT CREDITOR/DEBTOR

2.1. ENFORCEMENT/EXECUTION OF JUDGMENTS.

Enforcement of judgments is a legal mechanism deployed by a victorious party (judgement creditor) in a litigation process to obtain or assess the fruits of his victory. It also simply refers to the ways and means by which the fruits of any judgment or order made by a Court of competent jurisdiction are realized using the coercive processes of the trial court or any other Court so empowered by the law. The reliefs or decision granted by a court may not automatically be assessed by the judgment creditor if the judgment debtor fails, refuses or neglects to obey the judgment. A court may award damages, make declarations of rights or order specific performance, depending on the reliefs sought before it.¹

¹ By virtue of Section 318(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the word 'decision' has been enlarged and defined in relation to a court or any determination of the court which includes judgement, order, conviction, sentence or recommendation.

2.2. JUDGMNETS/ORDERS AND ITS TYPES.

The Supreme Court in the case of **SARAKI &ANOR VS KOTOYE**² defined Judgment as “**a binding, authentic, official, judicial determination of the court in respect of the claims and in an action before it**”

It therefore follows that judgment/order of court is the determination of the reliefs based on what is sought before the court either at the interlocutory stage or at the final determination of the entire case before the court. Necessary to note that there are several types of judgment of court which enables one to determine their enforceability or otherwise and the nature of the relief ordered to determine the best procedure of legal enforcement mechanism to adopt by the judgment creditor to benefit from the said victory. It is essential for us as humane instrument in the enforcement procedure to be able to discern and distinguish among the various types of judgment which duty may put before us to enforce in the course of our duties.

2.2.a DECLARATORY JUDGMENTS

It is not every order or judgment of a court that is enforceable. A typical example of an unenforceable judgments is a declaratory judgment or order³. In **Government of Gongola State vs Tukur**, a declaratory Judgment was held by the Supreme Court as;

... a solemn affirmation of a state or status by a court. That in itself is complete relief not executory.³

A declaratory judgment cannot be enforced by execution but by a subsequent proceeding in which the declared rights are being violated can be enforced. Obviously, a declaratory order or judgement of a court is that which merely states, defines or declares the right of the parties to the suit.

²(1992) 9 NWLR (PT. 264) 156.

³ (1989)4 NWLR (part 117) p.606.

2.2. b EXECUTORY JUDGEMENT

These are the judgements or orders of a court which declare the rights and obligations as well as liabilities of parties to a suit and proceed to direct a party to act in a particular way or restrain them from doing certain things. Executory judgement is known as **enforceable judgement** and it is enforceable immediately they are pronounced. Moreover, by their nature, executory judgements contain directives of court and they lucidly prescribe what is to be done unlike declaratory judgements that are merely interpretative or prescriptive.

2.2. c. CONSENT JUDGEMENT

Any form of judgement which is deliberately or mutually entered into by the agreement of parties before the court is a consent judgement. In other words, consent judgement is first agreed upon by the parties to a suit who thereafter present their agreements to the court and the court makes its pronouncement on it as a judgement of the court. Consent judgement is final, valid and binding on the parties.

2.2. d. DEFAULT JUDGEMENT

This is the type of judgement obtained by the claimant where the defendant fails or refuses to enter appearance or file a defence to the originating process within the time prescribed in the rules of court. It can also be obtained where a defendant who filed a defence fails to appear in court on the date fixed for hearing. The failure of the defendant to file a defence raises a legal implication that the defendant has no defence to the claim of the defendant or that the defendant admitted the claim. A default judgement is not a judgement on the merits and can be set aside by the court that grant it. The rules of court recognize different variants of default judgement, including judgement in default of appearance, judgement in default of defence, and judgement in default of appearance at case management conference.

2.3. JUDGMENT CREDITOR

Any person for the time being entitled to enforce a judgment. See section 19 of the Sheriff and Civil Process Act.

2.4. JUDGMENT DEBTOR

Any person liable under a judgment. Section 19 of the Sheriff and Civil Process Act.

3.0. APPLICABLE STATUTES AND RULES FOR JUDGMENT ENFORCEMENT IN NIGERIA.

3.1. The legal framework of the Federal Republic of Nigeria has the Constitution of the Federal Republic Nigeria, 1999 (as Amended) as the Grund norm. It is the foundational law for the existence of all Federal Acts and State laws applicable in Nigeria. By the combined effects of the provisions of sections 6(6)(a) &(b) of the Constitution, the court were empowered with the requisite enablement to enforce its decisions through the available enforcement mechanism. I therefore reproduce the provision of the section to wit;

6. The judicial powers vested in accordance with the foregoing provisions of this section - (a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law (b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;

See also section 287(1) of the 1999 Constitution (as amended)

3.2. Other relevant laws and rules that govern the enforcement and procedures of judgment execution in Nigeria are as follows;

- a. Sheriff and Civil Process Act⁴
- b. Judgment (Enforcement) Rules⁵

⁴ cap. S6, laws of the Federal Republic of Nigeria, 2004

⁵ Sheriffs & Civil Process Act (Supra) LFN, Volume 14.(Subsidiary legislation).

- c. High Court (Civil Procedure) Rules of the various State High Courts
- d. Federal High Court (Civil Procedures) Rules
- e. National Industrial Court (Civil Procedure) Rules
- f. Court of Appeal Rules and
- g. Supreme court Rules

Majorly, Sheriffs and Civil Process Act and Judgments (Enforcement) Rules have wider coverage and uniformity on Federal and State courts for the existing enforcement procedures while the rules of Court made specific details peculiar to their jurisdictions and practice. It is therefore expedient for us to peruse our Court rules in each of our State's Judicial Divisions or at the Federal Courts for the applicable Rules of Court necessarily complementing for the desired enforcement procedure intended by the parties.

4.0. METHODS OF JUDGMENTS ENFORCEMENT IN NIGERIA

There are several procedures for enforcement of judgment in Nigeria. The applicable procedure suitable may be determined by whether the judgment is monetary or non-monetary one. Proper understanding of the nature of the judgment will guide parties to the practical writs or forms to file in order to execute the desired judgment. It is therefore expedient to examine few among the several procedures available within the Nigeria legal system for the enforcement of judgment.

4.1. GARNISHEE PROCEEDINGS.

This is usually deployed to enforce monetary judgment and it is the most frequently used legal mechanism for the enforcement of monetary judgment in Nigeria. Garnishee proceeding is a method of enforcement of monetary judgement where a judgement creditor may attach or garnishee debts or monetary judgement which a judgement debtor owes him by attaching the money of the judgement debtor which is in the hand of a third party called the garnishee. Simply put, where the judgement debtor has money in the hand of a third party (for example a bank), the victorious party called the judgement

creditor can initiate proceeding to attach the money of the judgement debtor in the hand of the third party who is called a garnishee.

The procedure to be followed is contained in section 83 of the Sheriff & Civil Process Act to wit;

83 The court may, upon the ex parte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the applicant or his legal practitioner that judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to such debtor and is within the State, order that debts owing from such third person, hereinafter called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.

There are two stages of a garnishee proceeding and the first stage is the process of obtaining an order nisi. At this stage, the judgement creditor approaches the court by an ex parte application seeking the leave of the court to attach the funds of the judgement debtor which is in the hand of a third party. The court upon hearing the application, makes an order nisi directing the garnishee to show cause why the funds of the judgement debtor in the hand of the garnishee will not be attached.

The second stage is to make the order absolute. On the return date, which must not be less than 14 days; the court may, unless the garnishee show cause why the order absolute may not be made, make the order absolute. The order nisi is required to be served on

the judgement debtor and the garnishee. The garnishee is to pay into the court the amount within 8 days of service on him, after payment, he is to depose to an affidavit of compliance. Where he claims that the money of the judgement debtor is not in custody, he is to depose to an affidavit stating such fact. It is only monetary judgement that are ascertainable that can be enforced through garnishee proceeding.

4.2. WRIT OF FIERI FACIAS (FIFA)

This writ which is also known as writ of attachment or writ of FIFA is deployed to enforce monetary judgement and this can be issued against a judgment debtor immediately after the delivery of the judgment without notice to the judgment debtor.⁵ This authorizes the seizure of any moveable property of the judgement debtor which can be found within the jurisdiction of the court, subject to certain restrictions. The properties that can be seized include money, bank notes, cheque, bill of exchange, promissory notes with the exception of beddings, tools of trade and wearing apparels of the judgement debtor.

The judgement creditor approaches the Registrar for the issuance of the writ upon the payment of the prescribed fee. The writ will be signed by the judge and forwarded to the Sheriff or bailiff for execution⁶.

The Sheriff or bailiff will introduce himself to the judgement debtor, show him the writ and attach the moveable properties of the judgement debtor by taking them to the court and they will be sold by auction sale after five days. There shall be a minimum of 5 days waiting cum notice of intention to sell the removed property through properly conducted public auction. In the event that the judgment debtor is arrested and detained, the duration period for sale shall be one month and 15 days.

It must be stated that for the court sheriff to be empowered to attach the immovable property where the debt could not be offset by the items sold from the proceeds of the

⁶ See Forms 3,4 and 5 respectively of the first schedule, Sheriff and Civil Process Act (supra)

moveable properties, the judgment creditor shall apply to the High Court through a motion on Notice supported by affidavit. The affidavit must disclose the steps taken to enforce the judgment on the moveable property and the sum left to be balance which no moveable property of the judgment debtor is available for same. and the insufficiency of the said proceeds.

The application can only be made to a High Court through writs in form 38 even if the judgment to be enforced is from a magistrate court. The said immovable property shall not be sold until after 15 days from the date it was attached. The court issues a certificate of title to the successful buyer through a public auction after 21 days of the said purchase.

4.3. ENFORCEMENT OF JUDGMENT FOR POSSESSION IN ACTIONS FOR RECOVERY OF LAND. By virtue of the Order 11 Rule 5 of the Judgment Enforcement Rule, "a judgment or order for the recovery of land, or for the delivery of the possession of land, in an action other than an action between landlord and tenant shall be enforceable by a writ of possession which shall be in like form as a warrant of possession under the Recovery of Premises Law of the State, and shall be addressed to the sheriff."

This is attainable by the process of filing a praecipe in Form 3 and paying the necessary fees which therefore enjoins the sheriff to enter the land and cause the judgment creditor to have possession of it. The judgment creditor applies for the writ of possession in the case of enforcement of recovery of land or property between parties while it is the warrant of possession that would be filed in case of recovery of premise if the matter is between landlord and tenant. The process is definitely similar but with difference in the name of the issued process

The victorious party moves the registrar of the court to issue a warrant which the judge will sign. The bailiff will paste a copy of the warrant on the property to be recovered and then proceed to open or in some instances, where necessary, break the door to gain access, and if such a property is occupied by a tenant or anyone else the bailiff will have

to evacuate all the property before handing over vacant possession to the judgment creditor.

4.4. JUDGMENT SUMMONS.

A judgment summon is initiated by filing of praecipe form 13 seeking for issuance of Judgment summon in form 14 or 15 against a judgment debtor who is reasonably believed to have the means to pay the judgment debt owed to the Judgment creditor but has refused to do so. He is summoned to be examined on oath as to his means and earning with evidence to establish his ability or otherwise to pay the said debt. A warrant of arrest could be issued against the summoned judgment debtor if he refuses to attend on the given date. If he refused to attend court⁷

After the completion of the investigation, the court may commit the judgment debtor to prison or order attachment of the judgment debtor property or the funds discovered of him for the payment of the amount indebted to the judgment creditor.

4.5. SEQUESTRATION OR AN ORDER OF COMMITTAL ON A JUDGMENT DEBTOR'S SUMMONS

Sequestration is a judicial writ commanding the sheriff or other officer of the court to seize the goods of a person named in a writ.

Section 82 of the Sheriffs and Civil Process Act states:

In case the person against whom an order or warrant of arrest, commitment, or imprisonment issued is not and cannot be found, or is taken and detained in custody without obeying the judgment the court may make an order that a writ of sequestration do issue against his property, and such writ shall be issued and executed in the prescribed manner.

⁷ See section 55 of the Act. (supra)

From the above, a writ of sequestration can only be issued against the property of a person whom a court order for his arrest and commitment has been made; against a person to whom the order is made but cannot be found, or if the person, despite being detained refuses to obey the order for which he has been detained. Sequestration is a process of contempt. Where a defendant is required to do or abstain from doing any act, it is very appropriate to come by way of writ of sequestration or an order of committal.

4.6. ENFORCEMENT OF JUDGEMENTS DIRECTING DEED TO BE EXECUTED.

Where a judge directs the judgment debtor to execute a deed, as for instance in an action for specific performance he is directed to execute the deed of assignment in favour of the judgment creditor, and there is a default in complying with the order, the judgment creditor may enforce compliance to that order by recourse to Order I I rule I I of the Judgment (Enforcement) Procedure Rules. He (the judgment creditor) may prepare the deed or instrument in accordance with the terms of the judgment, pay the necessary stamp duty thereon and present same to the Court for execution. The execution of the document by the registrar of the court on the direction of the Judge has the same effect as if the document was executed by the judgment debtor himself

4. 7. ENFORCEMENT OF JUDGMENT IN ANOTHER STATE.

Judgment obtained from any of the states in Nigeria can be enforced in any other state. However, certain procedures must be followed to register and enable the enforcement of such judgment in the different state party intend to enforce the judgment. He must first acquire signed and sealed certificate of judgment to be enforced and swear to an affidavit stating the acts ordered by the court yet undone or left to be balance if monetary judgment by the Judgment debtor. The judgment would be registered with the Registrar of the court of the enforcing state. It is the duty of the Registrar of the enforcing state court to enter the particulars of the judgment in the book called 'The Nigerian Register of judgment.

It is at this point that the said judgment is deemed as a judgment of the court it was registered and same shall now be enforceable within the state jurisdiction through any of the available means and procedure of enforcement. After a successful execution, the Registrar of that court shall file a report of the outcome of the Execution to the Registrar of the court that initiated the interstate judgment enforcement

5.0. TIME LIMITS FOR ENFORCEMENT.

Judgments are meant to be obeyed immediately when delivered and it is equally enforceable on the same pedestal if not obeyed. It must however be stated that this right to enforce is not perpetual in Nigeria but are guided by specific time frame within which it must be enforced. Judgment in personam (decisions on rights and obligations between parties mainly involved in the suit) must be enforced within two years from the date it was delivered or that the appeal if any determined. Meanwhile, judgement in rem (decisions on status of a thing or property binding on the whole world and beyond the parties in the suit) must be enforced within six years from the date it was equally delivered. The law permits the Judgment creditor to pursue enforcement outside this timeframe but must seek leave of the court. It must be noted that where the court order the doing of an action within certain period of time, it must be adhered to in consideration of the period of enforcement.

6.0. POWERS OF ENFORCEMENT AGENCIES {SHERIFF, BAILIFFS}

As stated in the earlier part of this paper that enforcement of judgment procedure is created by law, the powers and duties of the agent in the service delivery mechanism are equally statutorily created. Sections 3, 4, 5 of the Act. These sections provided for the appointment of fit and proper officers as Sheriffs, Deputy Sherif and Bailiffs for the State and Federal High courts. The same acts subsequently created the functions of the said officer to wit;

- a. The Sheriff has powers to command person to arrest any person who has committed or is suspected of having committed a felony, and any person failing

to be such command shall on conviction be liable to pay a fine of N200 or to imprisonment for one year or to both such fine and such imprisonment. See section 7 of the Act.

- b. They are to receive writs and process of a court issued in accordance with this act and shall be charged with making returns thereto. See section 8 of the Act
- c. The Sheriff has the duty during court session to direct a sufficient number of police constables to be employed to keep order in and within the precinct of the court. See section 9 of the Act
- d. The Sheriff at the request of a person delivering a writ to him for execution shall give a receipt of that writ stating the hour and the day of its delivery. See section 10 of the Act
- e. The Sheriff shall perform any other or duties as may be imposed upon him by any enactment. See section 11 of the Act

7.0. CHALLENGES AND IMPEDIMENTS TOWARDS A SUCCESSFUL ENFORCEMENT AND EXECUTION

Of course, enforcement of judgements is protected by law, it must be stated that such desire is usually challenged by unwilling judgment debtor to frustrate and defeat the process. Some of these challenges shall be discussed in brief and the likely legal remedies available to the Judgment Creditor. It must be understood that all the earlier stated enforcement procedures operate as remedy available to the Judgment creditor to ensure compliance by the Judgment Debtor. For instance, the procedure of Judgment summons entails that the court may commit the judgment debtor to a term of imprisonment due to his verified willful intention to disobey judgment of the court despite having means to do so.

However, in the situation where the Judgment debtor willfully prevented and disturb the process of recovery by the Sheriff of the property in his possession or attachment of his property, contempt of court proceedings can be initiated against such judgment debtor.

It is therefore always mandatory for such execution to be done in the company of law enforcement officer invited by the Sheriff.

Another institutional bottleneck in the enforcement of judgments in Nigeria is the compromising attitudes of court officers who frustrate judgment enforcements by giving information to judgment debtors and by deliberately impeding the course of enforcement through administrative complexities. Equally, ignorance of the enforcement agents can constitute great havoc to the smooth progress of the process. There is thereof need to investigate such perceived compromise and further need to train sheriffs more on the positions of laws and procedure as it is herein done.

It is must be stated that the judgment debtor equally has some legal protections and rights legally provided as defence against immediate enforcement of judgment against his property pending the full determination of his appeal and application before a competent court. The essence of the judgment debtor right is to preserve the res. See **UBN LTD VS ODUSOTE BOOKS STORE LTD**⁸

A sheriff must be informed that it now settled law that a successfully filed stay of execution in a competent court, served on the Respondent, is enough encumbrance to stay further action in the process of enforcement of judgment in favour of the judgment creditor. See the case of **EZEGBU VS FAT**⁹. On another ground, judgment debtor can base his application on insolvency or being so poor to afford the judgment sum payable to the Judgment creditor. The discretion of the court may be granted favorably to the Judgment debtor who successfully proved that he is lacking the financial strength to offset the debt. This therefore operates as good defence for the progress of the enforcement. see the case of **ABDULKADIR VS ALI (1999) 1 NWLR (PT. 588)613**.

The remedy available for the sheriff where the attached property is being claim by other party is to initiate interpleader proceedings through summons known as interpleader

⁸ (1994) 3 NWLR (PT. 331)129

⁹ (1985)2 NWLRE (PT.10) 106

summons. This is called Sheriff's interpleader seeking the investigation and directive of the court on the adverse claims to the attached property. From the combined effects of the provisions of Order VI Rule 1 of the Judgment (Enforcement) Rules and sections 34(1) of the Sheriffs and Civil Process Act, the Sheriff may apply to the court for relief by a way of interpleader to determine the adverse claims by parties other than the Judgment debtor to the subject of the enforcement proceeding.

Other notable challenges include;

- a. Conflicting power interest against the proceedings
- b. Lack of adequate financial mobilization for logistics involved in the enforcement proceedings
- c. Lack of storage facility to keep the items seized by the sheriff pending the sale of the items.
- d. Violent attacks on the enforcing officers by agents of the judgment debtors.

8.0. CONCLUSION

Enforcement of judgments in any country is a very key and fundamental aspect of the legal system and developmental process. Judgment enforcement should not be arduous, illusive and dicey. But it should be liberal, predictable and affordable. The ambience to archiving this must be conducive for the officers of the Judicial system who are saddled with this onerous task. They risked their lives to allow the judgment creditor enjoy the benefits of his judgment.

Therefore, special risk allowance adequate enough to compensate for the risk involved and prevent their easy fall for undue financial inducement must be provided on monthly basis for these officers. There must be adequate and armed security officers to accompany the officer to execute the enforcement. I appreciate the management of the Nigeria Judicial Institute for this commendable strive to impact the instant knowledge necessary to attain the desired goals for efficient service delivery of enforcement of judgment in the country. I am most honored to be called upon to deliver this paper. I

must confess that my understanding of the topic discussed increased massively due to this opportunity. Most grateful for the indulgence.

Thanks.

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