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ENFORCEMENT AND EXECUTION OF JUDGMENTS: PRACTICE AND PROCEDURE

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Protocol

I crave your indulgence to appreciate my lord the Chief Justice of Nigerian and Chairman of the Board of Governors of the National Judicial Institute (NJI) Abuja, **Hon. Justice Kudirat Motonmori Olatukunbo Kekere-Ekun, GCON** for granting the request of my nomination to present this paper at a gathering of this nature.

In the same vein, I do express my thanks to the Administrator of the Institute, my lord Hon. Justice Salisu Garba Abdullahi (Rtd.) for finding me worthy of leading a discourse on the topic.

Equally of no less recognition that I have to accord is the Chief Judge of Nasarawa State, Hon. Justice Aisha Mohammed Usman Bashir for the kind gesture of allowing me to come and share my thoughts on the subject

Noteworthy also is that I pay tributes to the Secretary of the Institute, the Director of Studies and his colleagues as well as management staff of this great Institute for the team work always put in place in supporting the Administrator to achieve the much we see in this Institute.

To my dear participants, I congratulate you being nominated to participate in this Workshop by your various Heads of Court, it is a worthy one.

ENFORCEMENT AND EXECUTION OF JUDGMENTS:

PRACTICE AND PROCEDURE

By the nature of the topic, it is broad but I have been asked to compress it as much as I can. I am therefore left with no choice than to attempt to use a winnowing fork to pick some salient aspects for discourse at this session

WHAT THEN IS A JUDGMENT OR DECISION OF A COURT?

In the case of *Mrs. Saraki & Anor. V. Kotoye LPELR 3016 SC or (1992) 9 NWLR (Pt.156 SCN)* a judgment is defined as “A binding, authentic, official, judicial determination of the court in respect of the claims or suit in an action before it” – *per Karibi Whyte (JSC) (Rtd.) (of blessed memory) Pg. 592*. See also *Govt. of Gongola State v. Tukur (1989) 4 NWLR (Pt. 117)*

Equally, S.318 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) defines a decision thus:

“means in relation to a court of law any determination of the court and includes judgments, decree, order, convictions, sentences or recommendation. See also *Lekwot v. Judicial Tribunal (1993) 2 NWLR (Pt. 276) Pg. 410.*

From the last definition therefore, it means a ruling made by the court while the case is still pending i.e. interim or interlocutory or a final ruling all amount to a judgment. Significantly, not all judgments are executory.

WHAT IS ENFORCEMENT OR EXECUTION OF JUDGMENT?

Simply put, this is the act or process of compelling the compliance, observance, carrying out, implementation, bringing to bare the decision/order/pronouncement or judgment made by a court.

IMPORTANCE OF ENFORCEMENT AND EXECUTION OF JUDGMENTS

Without enforcement, the J/Creditor is left with sterile victory and so the trouble of going to court would not be worth it, i.e. paper work with no tangible benefits. It is enforcement of decisions of the courts that would guarantee the continuous existence of the courts and so by extension guarantee our collective worth.

By S.287 CFRN 1999 (as amended) decisions of the Supreme Court must be enforced in any part of the federation by all authorities and persons and courts with subordinate jurisdiction to it. The same applies to the other superior courts in the hierarchy. By parity of reasoning, it applies to lower court. In *Anakwenze v. Aneke & Ors. (1985) LPELR 481 (SC)* held that the Court of Appeal can enforce its own decision.

WHAT IS THE LEGAL REGIME GOVERNING ENFORCEMENT/EXECUTION OF DECISIONS OF COURTS?

The issue of service and execution in any State in Nigeria and the F.C.T of civil and criminal processes, judgments, decrees, orders and other decisions of any court of law outside Nigeria or any court of law that is in Nigeria apart from a court of law established by a State House of Assembly of a State is rooted in item No. 57 on the exclusive legislative list of our constitution. This means no State House of Assembly can legislate on this but they can legislate on the subject for the courts established by them, such as the Magistrate courts, Area and Customary courts, etc. See the case of *Onjewu v. K.S.M.C.I. (2003) 10 NWLR (Pt.827) Pg. 40 at 83-85 CA or (2002) LPELR 5507 CA.*

I hasten to state that by courts outside Nigeria, it is meant courts of other countries that have reciprocal legislation that relates to enforcement of decisions of courts of our country in their countries. On the principle that States cannot legislate on items in the exclusive legislature list, see *Military Gov. Ondo v. Adewunmi*

(1988) 3 NWLR (Pt. 82) Pg. 280; Nigeria Soft Drinks v. A.G. of Oyo State (1987) 2 NWLR (Pt. 57) Pg. 444.

The legal regime are –

1. The Sheriff and Civil Process Act 1990 Cap 407. This legislation came into effect on 1/6/1945 and by virtue of S. 315(1) of the Constitution, it is deemed an Act of the National Assembly;
2. Apart from this, we have the Sheriffs and Civil Process Laws of the various States of the Federation.
3. Other than the Sheriffs and Civil Process Act and laws of the various States, we also have the Judgment Enforcement Rules. These Rules are made or derived their existence from S. 94 of the SCPA that confers on the Chief Judge of the FCT and the States, subject to the approval of the President or Governor the power to make Rules governing enforcement of judgments among other things in the FCT and the States.

Additionally, the Sheriffs and Civil Process Laws of the various States I believe also empower the Chief Judges to so do as regards their States notwithstanding the general provisions of S. 94 SCPA.

4. Similarly, we also have Foreign Judgments (Reciprocal Enforcement) Act effective 1/2/1961. Importantly, S. 3 thereof confers the power to determine the judgments of which countries can be enforced on the Minister of Justice. What must be said is that such a judgment must first be registered by way of an application to the judex and once it is granted, the execution is just the same way a judgment of a court in Nigeria is carried out.

N.B. for that judgment to be registered for execution, it must be within 6 years of delivery except time is extended by the judex upon application while for judgments of courts in Nigeria the period must be within two years as against a party in the case and as against a non party in the case six years. – see Order

IV Rule 8 J..E.R but time can be extended by the judex – Order II Rule 2 J.E.R.

5. The next piece of legislation is the sales by auction Act 1990 Cap 549. This applies to Licensed Private Auctioneers and so it is not within our scope in this discourse.

THE PIVOTAL ROLES OF MANAGEMENT AND ADMINISTRATORS OF A COURT IN EXECUTION OF JUDGMENT

Of premier note is that for any litigant that comes to court his first contact is a manager/administrator in this context the Registrar or Registry staff of a court. This is because it is where suits or complaints are filed. It is the same Registry that is the last point of resort when the litigant wants enforcement or the judgment debtor has come to comply with the orders of a court. It therefore means that the success or failure of execution of a judgment depends on the court managers/administrators. It is the hop around which execution of judgments revolve.

The SCPA makes provision for a fit and proper person to be appointed as the Sheriff and Deputy Sheriff of a State, see Ss. 3 and 4 SCPA. S.5 thereof provides for the appointment of bailiffs by Sheriffs.

Loosely the Chief Registrar can be equated with a Deputy Sheriff while the bailiffs remain who they are. Under the Act the duties of a sheriff include to receive writs and processes, executing same and making returns on them, see Ss. 8 and 10 SCPA.

Similarly, S.6 SCPA conveys the message that the schedules of a bailiff includes execution of writs and writs include writs for execution of judgments. In the same vein S. 15 SCPA enacts that it shall be the duty of every police officer to assist in the execution of process of the court.

Undoubtedly, when a police officer is called upon to assist in the execution of a processes or judgment of court, he is in the office of or seen as a court administrator/manager for that purpose.

TYPES OF JUDGMENTS

Of pivotal importance is that not all decisions or judgments are executory in nature. Those judgments that apart from declaring the right(s) of a party, proceed to mandate or prohibit certain acts or omissions are called executory judgments while those that merely declare rights without more are merely declaratory with nothing to enforce. See *Okoye v. Santili (1990) 2 NWLR (Pt. 131) Pg.172; Govt. of Gongola State v. Tukur (1989) NWLR (Pt.117) Pg. 517*. In *Govt. of Gongola State v. Tukur* (supra) the Supreme Court per Obaseki JSC (Rtd.) (of blessed memory) said,

“It should be noted that many judgments and orders do not require to be enforced as the judgment and order itself is all that the party obtaining it requires.”

It therefore means that a judgment that merely re-asserts the status of an existing situation, e.g. “That Mr. D.E. is and remains the Head of the Ojigo family”, is merely declaratory and needs no enforcement because there is no command to do anything or prohibition from doing anything.

EXECUTION OF MONETARY JUDGMENTS

This is by seizure and sale of goods and chattels of the J/debtor. J/creditor must first apply by filling a praecipe form. Registrar must enter in the appropriate book kept for the purpose the time and date of the application.

Where there are two or more writs of execution they must be treated in order of priority – S. 32 SCPA. Where two writs are issued at the same time, priority shall be given to the one that applied first, see *Ajale v. Akingboro (1933) 11 NLR 130*. The indication of the time and date is to determine who takes priority – see *Tijani v. Agbeyegbe (1941) 7 WACA 66*.

Execution cannot be done on Sunday or public holidays. On other days it must be between 6a.m and 6p.m – Order 11 Rule 4 J.E.R. The goods and chattels to be seized and sold shall exclude his wearing apparel, beddings and those of his family and tools of his trade worth N10.00 (ten naira).

The attachable properties include promissory notes, bank notes, cash, bills of exchange, bonds; see generally Ss. 20 and 25 SCPA. Movable property of the J/debtor that are in the hands of a third party that are not subject to any lien can be attached. See Order V Rules 1 and 2 J.E.R. This is done by an office copy of an order to that effect prohibiting dealing in such property (and if it is shares) by delivering to the person in whose name the shares are or the manager or secretary or other officer of the company – see Order V Rule 23 J.E.R.

Where there is an order for instalmental payment, it supercedes payment in one tranch. Default of payment of one instalment can attract levy of execution on the whole amount but the court can also order that execution shall be levied as per each default of instalment. See S.21 SCPA.

Where there are many J/debtors, order for instalmental payment granted against one would disenable the J/creditor to go ahead to execute against the others. Where the j/debtor was sued in a representative capacity, despite the grant of order for instalmental payment, the j/creditor can apply to have execution levied against other persons that the j/debtor represents. See *Bello Akoje v, Mogaji Adedehin & Family v. Lasisi Akanmi (1957) WRNLR 190.*

The movable properties must be within the jurisdiction of the court – S.20(2) SCPA. No sale of the movable property shall be made until at least 5 days following the day the goods were seized. The exception is where the goods are of perishable nature or the owner of the goods so requests in writing, see S.29 SCPA. The sale must be between 7.00am and 8.00pm. S. 29(3) SCPA. If sales are not completed same can be adjourned not beyond 3 days and the court for good reason can direct a postponement of such sales but not beyond 28 days, see S.295 SCPA.

Payment of the j/debt supercedes attachment and or sale of the attached goods, see *Akpunonu v. Bakaert Overseas (1995) 5 NWLR (Pt.393) Pg. 42 or (200) LPELR 3905 SC.* The venue of the auction shall be the court house in issue or where

the place that the property attached is more than 8 kilometers to the court house the judge shall give such direction as he deems fit.

For sale of any property of value above N40.00 notice must be published 4 days before the date of sale. The publication can be by pasting upon the door of the court house (not a hidden corner) or at the place where the sale is to take place or in a newspaper – see S. 29 SCPA. Where the goods to be sold arise from a judgment of N40.00 and above, including legal incidental expenses, same shall be by public auction except if the court otherwise directs and not by private auction and shall be publicly advertised by the sheriff at least three (3) clear days preceding the day of sale. See S.30(1) SCPA.

Where goods are seized in execution and the Registrar has notice of another or other executions, no application for leave to sale shall be entertained until other execution creditors are put on notice to appear – see S.30(2) SCPA. The application to sale is done administratively to the Registrar of the court. On payment, the goods are delivered to the purchaser. The sale is knocked down to the highest bidder and there must be a knock down price. The attachment is done by giving the J/debtor or leaving at the place where the attachment is effected the prescribed notice. Primarily 24 hours notice must be given to the owner of the attached goods of the time and place of sale before such sale; So also the inventory of the properties attached shall be served on him personally or send to him by post to an address where the property is attached, see Order V Rule 6 J.E.R.

Where the properties are not within the jurisdiction of the court, the court where the properties are found will be communicated appropriately and once communicated the foreign court shall act mutatis mutandis as the home court – see S.37 SCPA. Where the attached items are promissory notes, bills of exchange, bonds, or other securities, the J/creditor may sue in the name that the J/debtor could

have sued. S. 29 SCPA. To crown it all, this process is called writ of fieri facias (Fifa)

PLACE OF CUSTODY

The property shall be kept by the bailiff in a fit place or in the custody of a fit person approved by the sheriff or to be safeguarded in such a manner as directed by the sheriff or deputy sheriff. S. 26 SCPA. **N.B:** execution can be levied against a ship because it is movable property, see ***C.R High Court Lagos State v. Vamos Navigation Ltd. NSC 271.*** A j/creditor for instance would do well to find out the owners of a ship by checking the entry in the recent volume of Lloyds Register of Ships and Supplements – see “***The Law of Execution of Judgment*** 1st Ed. By Sir **T. A. Nwamara.**

MODE OF DISBURSEMENT

The order of payment is first the money due to the sheriffs, bailiffs, appraisals, prescribed fees, expenses of sales, amount to be levied, costs paid in the course of execution and other costs awarded be paid and then the balance to the j/debtor.

SALE OF IMMOVABLE PROPERTY

The J/creditor must establish that there is no enough or known movable property of the j/debtor that can be sold to satisfy the j/debt with due diligence within jurisdiction. He must state the amount realized if any and the balance outstanding and where the judgment is that of a Magistrate (lower) court, it must be by application to the High Court – see S. 44 SCPA. The motion must be on notice to the j/debtor – see ***Opubor v. Damiraru (1961) All NLR 430; Leads v. Bank of the North (1998) 7 SCNJ 528.***

The j/creditor cannot rely on an affidavit by the bailiff to say no sufficient or any movable property of the j/debtor can be traced – see ***Asraco (Nig) Ltd. v. Trade Bank Plc (2005) 6 NWLR (Pt. 815) Pg.22 at 35.***

Where the j/debtor is a Nigerian and the immovable property attached is the j/debtor's right, title or interest in the property/building occupied by him which he has no right under customary law to alienate but he is entitled to remove the materials or some of the materials used in the construction, such interest, right or title to such building cannot be sold. If the interest, right or title is in the materials or some of them that were used for the building he can only sell with the leave of the court – See S. 45 S.C.P.A. Notably Order V Rules 9 and 10 J.E.R gives the court power to appoint managers to manage the property and raise money to satisfy the j/debt.

A fountain statement to make is that no sale shall be conducted unless it is 15 clear days from the date the property was attached and notice of such sale must be given 14 days before the day of sale. All other protocols as to time, place, mode of sale are virtually as when dealing with movable property – see Order VII Rules 2, 3,, 4, 5, and 7 J.E.R. The court shall issue a certificate of purchase to the purchaser – see *Cardoso v. Daniel (1986) LPELR 830 SC* and if any law requires any procedures, same must be observed. Where there is a mortgage the purchaser takes after the mortgagor – see *Kasumu v. Scott & Ors. (1967) 318 LPELR 25359 SC*. Under S. 54 S.C.P.A where the j/creditor and j/debtor or parties in the suit are Muslims or a firm or company limited by shares is owned by persons who are all Muslims, then they shall be guided by principles of Islamic law relating to execution of immovable property.

JUDGMENT DEBTOR SUMMONS (J.D.S.)

The j/debtor on application of the j/creditor is issued a summons to come to court on a fixed date to be examined as to his ability or otherwise to pay the j/debt, S. 55 S.C.P.A and Order 14 J.E.R. The application is done administratively to the court within where the j/debtor resides. Where he does not appear or is believed to be preparing to leave jurisdiction a warrant may be issued for his arrest. The session

is like a normal session with all sides afforded opportunities to put across their cause or case which includes cross examination. See *Sir C.A. Nwamara Pg. 184 and S. 60 SCPA*. The j/creditor pays the travelling expenses of the j/debtor.

The court at the end of the day can commit the j/debtor to prison, attached, sale his property, order for installment payment or discharge him. The imprisonment shall not exceed 6 months and must be only where the court is satisfied that the j/debtor since the decision has the means to pay but defaulted and the j/creditor must pay for his subsistence in the prison. See *Aneke v. Ede (1989) 1 NWLR (Pt. 100) Pg. 749 CA*.

Where it is an order of instalmental payment and there is a default, it is a matter of another investigation upon a fresh J.D.S. see *Makinde v. Barclays Bank DCO (1962) 2 All NLR 104*. Importantly, where the j/debtor misconducts himself under S.66 SCPA the court can sanction him. Imprisonment does not obviate the satisfaction of the j/debt.

INTERPLEADER SUMMONS

This is provided for under S.34 SCPA and Order VI Rules 1 -15 J.E.R. it entails another person claiming the property that has been attached in execution of a decision of a court as his. He does that by making known to the bailiff or sheriff holding the writ. The bailiff in turn informs the Registrar who shall then cause the relevant notice to be sent to the J/creditor. If the J/creditor admits the claim the property is released, where he does not the bailiff or sheriff shall apply for a summons. The Registrar shall serve the summons on the claimant and J/creditor to claim against each other or to interplead. See *Nwekeson v. Onuigbo (1991) 3 NWLR (Pt. 178) P. 125*. Where one of them claims damages against the sheriff or bailiff, the bailiff/sheriff shall then be made a party if not he is not ordinarily a party, see *Olatunde v. O.A.U (1998) 4 SCNJ 59 at 70 and Okwoche v. Dibia (1994) 2 NWLR (Pt. 325) 195*. The hearing takes the shape of a normal proceeding with

parties availing the court facts in affidavit and exhibits at their disposal. Where the claim is within a case, the interpleader shall be by motion on notice; where it is after a decision of the court, but during execution, it shall be by a summons, see *Nwamara Pg. 146*. The service is like in any other process but there must be at least 14 clear days between the date of service and when the proceedings would hold depending on the distance between the court and where the claimant is coming from.

Where damages are claimed against the sheriff/bailiff from either of the parties, the particulars and grounds of the claim must be stated. Often than expected, attached property may be claimed as being subject to a mortgage or bill of sale or other security, then such property would be sold and such claim first settled.

In any case if the property is immovable property and the parties are subject to customary law, the proceedings shall be halted and the parties given one month or such extended period as there may be need to take the issue to a customary or Area court for determination between the J/Creditor and the claimant. Note generally that an interpleader claim serves as a stay of the execution until it is determined. It is salient to state that the court may demand security for costs from the claimant.

GARNISHEE PROCEEDINGS

This is one of the methods by which a j/debt can easily be enforced. It is a sort of interlocutory application. See Ss. 83-92 SCPA and Ord. VIII J.E.R; *Omonuwa v. Oshodin (1985) 2 NWLR (Pt.10) Pg.924*. It is a process whereby the J/creditor applies via an ex-parte motion to the court that a debt or property of the J/debtor is in the hands of another person called the Garnishee, should be attached and paid or given to him in satisfaction of a recovered sum that has not been wholly or partly satisfied. The judgment debt must be due. The J/creditor is called the

Garnishor. If the court grants the ex-parte request, the order nisi is served on the garnishee and the j/debtor along with a motion on notice and a return date of when the said motion on notice is to be heard. There must be at least 14 days between when the motion/order is served and when the motion on notice is to be heard. The j/debtor is not ordinarily a party. See **PPMC Ltd.v. Delphi Pet. Inc. (2005) 8 NWLR (Pt.928) Pg. 458** but he is carried along so as to know what is happening to his assets or to be sure the sum represented by the J/creditor is due and is the correct amount – **Gwede v. Delta State House of Assembly & Anor. (2019) LPELR 472241 SC.**

The order nisi does not attach any subsequent amount paid to the account – see **Nwamara Pg.226**. At the resumed hearing if the garnishee does not dispute the application the order nisi is made absolute and the money or property ordered delivered to the J/creditor or paid to him. The moment the order nisi is served, the property or amount with the garnishee to the tune of the j/debt is attached and cannot be dealt with by sale, transfer, alienation, etc by the garnishee, he becomes a mere custodian of the funds or property awaiting direction of the court – see **Sokoto State Govt. v. Komalax Nig. Ltd. (2004) 9 NWLR (Pt.878) Pg. 354 CA.** The proceedings can be taken in the court within jurisdiction or where the property or money is held not necessarily the jurisdiction where the decision was rendered. Same can be before a Magistrates' court even if the amount involved is more than its ordinary monetary powers, see Order 8 Rules 1 and 2 J.E.R. Where there are two J/debtors, garnishee can be proceeded with against one of them – see **Mucas Hosp. Ltd. V. Fasuyi (2004) 8 NWLR (Pt.974) Pg. 67.**

Salary can only be attached if it is due and payable – see **Lagos Stores Ltd. V. St. Anna (1929) 9 NLR 96.** Of utmost note is that where the garnishee disputes that the asset or money is not that of the J/debtor, the court would have to determine that issue and both the garnishee and any other person interested must be heard in the interest of fair hearing.

No garnishee order should be granted if a motion for stay or appeal is pending so as not to foist on the appellate court a fait accompli, see *Eze & Anor. V. A. G. Federation & Anor.; C.B.N v. Africa Plc & Ors. Unreported Suit No. CD/64/97 of 11/12/2001 High Court Lagos.*

Money in the hands of Public Officers or Custodia Legis

A garment of protection is embedded in S.84 SCPA which clearly enacts that any money liable to be attached that is in the custody or under the control of a public officer or custodia legis, no garnishee order shall be made until the consent of the appropriate officer is first obtained, i.e. the A.G. of the Federation or State depending on the public officer involved or Registrar of the court.

In a plethora of cases this provision has been held not to be in conflict with S. 287 of the Constitution because it seeks to protect public funds budgeted for a particular purpose and is in accordance with public policy, see *Onjekwu v. Kogi State Min. of Industry & Commerce (2002) LPELR 5507 CA; CBN v. Oscko Petroleum Ltd. & Ors. (2018) LPELR46 732 CA*. However where the A.G. is a party or active participant in proceedings then the need to get the consent is obviated – see *CBN v. Interstella Communication Ltd. & Ors. (2017) LPELR 43 940 SC*.

The point has been made with grave concern whether S. 84 SCPA is in conflict with S. 287 of the Constitution that makes it mandatory for judgments of superior courts to be enforced and Ss.150 and 195 of the said Constitution that create the offices of A.G. of the Federation and States as chief law officers of the Federation/States whose roles includes the observance of the rule of law and so by implication S. 84 SCPA tends to erode the powers of the Judiciary as an arm of Government whose judgments are being censored by an appointee of the Executive. In any case the case law remains for now that S. 84 SCPA is not unconstitutional. See *C.B.N v. Ochife & Ors. (2025) LPELR 80220 SC*.

It bears saying that where the J/debtor does not dispute the debt or where he disputes it and it is resolved in favour of the J/creditor, the court makes the order nisi absolute and orders the money to be paid to the court or to the J/creditor directly.

Premium voice must be raised that this step of garnishee proceedings can be taken after a J.D.S or without first resorting to a J.D.S. Where the garnishee order absolute was obtained and the fact that the order nisi was not served and the fact that there was at the Court of Appeal an application for stay of execution of the judgment, such a garnishee order absolute would be set aside by the High Court, see *Eze & Anor v. A.G. Federation & Anor.: CBN v. African Oil Nig. Plc & Ors. (supra)*.

Any appeal against a garnishee order is within 14 days since it is an interlocutory order. See *UBN Plc v. Boney Marcus Ltd. (2001) 13 NWLR (Pt. 731) Pg. 517*. Note that a dispute by the J/debtor (Garnishee) must be a dispute in the real sense of a concrete or material denial of the J/creditor's claim factually not a mere or bare face denial; The garnishee is not on a proxy war for the j/debtor. See the case of *G.T.B v. Innoson Nig. Ltd. (2017) LPRLR 42368*.

The point must be made that where a garnishee claims that he has no debt of the J/debtor or that funds in his hands belong to a 3rd party or there is a lien on same (the onus of which is on him) the order nisi is vacated but if the reverse is the case, then it is made absolute.

Similarly, the J/debtor once served with the order nisi, can dispute the amount claimed as j/debt by filing the necessary processes. See Order 5 Rule 8(1) – (2) J.E.R and where he succeeds, then the order nisi would be made absolute as regards the amount established only.

A garnishee once he pays the amount in his possession to the J/creditor, he is then discharged of any debt he hitherto owed the J/debtor.

WRIT OF SEQUESTRATION

This is traceable to S.82 SCPA. It involves a situation where an order or warrant has been issued for the arrest, commitment or imprisonment against a J/debtor and he cannot be found for same to be executed or he is already in custody yet the order of the court has not been obeyed, the court may order that his immovable property be seized and kept so also any goods found therein by Commissioner(s) to be appointed by the court. The commissioners are expected to manage the property and use the proceeds to satisfy the judgment debt. See Ord. 4 Rules 8 and 9 J.E.R. This I believe must be on application by the j/creditor and the commissioner(s) may as ordered by the court would pay the costs of execution first, then their remuneration and the J/debt and costs.

LANDLOR'S CLAIM FOR RENTS

In S. 35 of the SCPA and Order IV Rule 1 J.E.R a provision is made where a landlord who has a judgment for recovery of premises can on the date of the seizure of goods so long as it is within 5 days after the date of the seizure or before the removal of the goods make a claim by delivering in writing and signed by himself or his agent to the person carrying execution. The amount of rent claimed to be in arrears and the period of the area.

In such a case the bailiff shall distrain for the rent claimed and cost of the distress and shall not within five days after the distress sell any part of the goods seized except if the goods are of a perishable nature or the person whose goods have been seized so requests in writing and he shall then disburse the money as specified therein.

EXECUTION BY BEING PUT INTO POSSESSION

This arises where the execution is for delivery of possession. This covers decisions of the court where the defendant is ordered to vacate possession and for the plaintiff to be put into possession. See Order 11 Rule 5 J.E.R. It includes interim and interlocutory orders of injunction. The law is that the plaintiff cannot approach

the court to enforce the order till after 3 days or on the date stated in the decision and where not stated, then 14 days after the decision - see Order 4 Rule 1 J.E.R.

It is carried out by delivery of vacant possession. Where the j/creditor permits, not all things on the land may be removed. The writ of possession must not be issued. It must describe the land adequately.

Where it is to recover premises, vacant possession can be delivered by removing the properties of the tenant from the apartment. On the other hand where the decision of the court is a dismissal of a plaintiff's claim for declaration of title to land; it cannot be enforced by a writ of possession because it is not executory. See *Makinde v. Akerinwole (1995) 6 NWLR (Pt.399 Pg.*

In the same vein, where the decision apart of delivery of possession involves award of money, a writ of fifa can be filled at the same time and executed contemporaneously. See "*Enforcement of Judgments*" by Afe Babalola Pg. 153-157.

EXECUTION BY WRIT OF COMMITAL

- This dwells on prohibitive or mandatory orders of a court to do or refrain from doing a thing or the delivery of goods. S. 72 SCPA
- One take away about this provision is that it exempts issue of monetary awards. See J.E.R Order 9 Rule 13.
- Also the failure to satisfy the j/debt must be deliberate or willful not where it is not within the control of the j/debtor.

The process is commenced with an application by the Judgment Debtor to the Registrar of the court for committal and it is done administratively see *Kadiri Vs. Kadiri (1990) 5 NWLR 665.*

Now where the Judgment Debtor or person in contempt was not in court when the order was made, a notice of consequence of disobedience of court order along with the order endorsed on it is (Form 48) must be served on the contemptnor

personally. On the lapse of two clear days after the service of the said Form 48 and the defendant has not complied, Form 49 is then served on the defendant and this again is upon the application of the Judgment Creditor. Form 49 would indicate the date the defender would be heard as to why he did not obey the order and it shall still contain therein the details of the order and it has to be personally served see Order IX Rule 13(1) – (3). These minutest details are to ensure that the Judgment Debtor is not in anyway mistaken as to what he is expected to do by the order and the personal service is to ensure that he is duly aware of all steps; where service cannot be personally effected, then a motion ex-parte for substituted service can be taken and granted, because the process of service is the same way a judgment summons is served based on the Rules of the court.

Further-more, committal proceedings are quasi criminal hence the strict adherence to details and the Judgment Debtor ought to be in court personally or physically in response to the invitation to defend himself against the committal proceedings. Now Form 49 in my view, can be accompanied by a motion and an affidavit as well as the necessary documents such as attaching the proof that the enrolled order and Form 48 were personally served on the Judgment Debtor as ordered. The defence may be in the form of a counter affidavit and if need be with other accompaniments; where the court rules out any defence by the Judgment Debtor he is committed to prison for such period as the court may impose so long as the order remains unobeyed. Where it is not possible to obey such order immediately; the committal to prison would be for such period as is necessary to ensure compliance with the whole or parts of it. Where it is not possible to immediately obey the order at all, then the imprisonment is for such period as the court may impose in default of payment of fine for the non compliance.

See generally on this the case of *Odu Vs. Jolaoso (2003) 8 NWLR (pt. 823) pg. 547 at 559 CA and Abbas v. Solomon (2001) 15 NWLR (Pt. 355) Pg.144.*

Without doubt, where a Judgment debtor contests the judgment/order on appeal, he cannot be committed, so also if there is a motion for stay of execution or a motion to set aside the said order; these are hindrances to the continuation of committal proceedings until they are resolved one way or the other – see *Adelakun Vs. Adelakun (1993) 7 NWLR (pt. 308) pg. 746 at 96.*

Worthy of note is that Forms 48 and 49 must be signed by the Registrar of the court not the Judgment Creditor counsel or the judge else it would be struck out for being incompetent see *Odu Vs. Jolaoso & Ors (supra)*. It is advised to endorse the order on the said Form 48 and not to serve same separately see *Enabulele v. Agbonlahor(1999) LPELR 1138 SC or (1967) NWLR pg. 253 – Obaseki (J).*

This is so because Form 48 contains the penalty for failure to obey and so the Defendant is accorded opportunity to retrace his steps so that his liberty is not taken away lightly – see *Ojeme Vs. Momodu III (1995) 6 NWLR (pt. 403) pg. 583 CA 597*. The endorsement of the order on Form 48 must be done word for word comma for comma else it nullifies the proceedings see *Chief Darby Akpo Vs. Chief Effiong Akpan (1996) 7 NWLR (pt. 462) pg. 620.*

One point that cannot be ignored is that the standard of proof is prove beyond reasonable doubt since it is quasi criminal involving the liberty of an individual – *Ezeji Vs. Ike (1997) 2 NWLR (pt. 486) pg. 206.*

Other than the above, in all appeals against orders for committal because of disobedience of orders of court, the Attorney-General is normally the person to be made the Respondent see *In Re (GM) Boyo (1970) 1 All NLR 111.*

APPLICATION FOR DISCHARGE BY THE CONTEMNOR

This concerns more of the judex than administrators.

THE ADVANTAGES AND DISADVANTAGES OF THESE METHODS OF ENFORCEMENTS

WRIT OF FIERI FACIAS (FIFA)

1. In the use of writ of fieri facias (Fifa) it enables the Judgment Creditor or executioner to go for the most valuable movable asset that if sold, can turn in the judgment sum and same applies to the immovable property and as much of these properties as are necessary
2. It is very effective and speedy
3. It affords the Judgment Debtor opportunity to redeem his property by paying the judgment debt before the eventual auction of same.

Disadvantages

1. The method in the long run heaps on the judgment debtor the burden of background search of the movable and the immovable property of the Judgment Debtor.
2. Levying execution on the property of a wrong person and the attendant liability thereof.
3. Depending on the nature of the immovable property the safety of where to keep them can sometimes be an issue or problem.
4. It can sometimes result in the Judgment Debtor losing his shelter and diminish his humanity.
5. By this method of landlord's claim for rents, it makes the landlord a judge in his own cause.

SEQUESTRATION

1. The clear advantage of this method is that the judgment debtor is still the legal owner of the property sequestered while the judgment debt is being satisfied gradually and steadily.
2. The Judgment debtor is likely to see the Judgment creditor as a reasonable man who did not want to go for his jugular.

Disadvantages

1. The money or judgment debt is not paid at once in that the Judgment debtor has a breathing space but at the expense of the Judgment Creditor.

2. Where the commissioners appointed turned dishonest, then the woes of the Judgment Creditor are worst as the judgment debt cannot be recovered as speedily as intended.

J. D. S. Advantages

1. The Judgment Debtor is in the 1st place given some sort of soft landing in that he has all the time between the service of the summons and when he is needed in court to satisfy the judgment debt.
2. He is afforded a honest hearing to find out whether he has what it takes to satisfy the judgment debt.
3. Where the Judgment debtor is dishonest he can be met with serious consequences which include sale of his property and imprisonment.

Disadvantages

1. The Judgment debtor suffers double jeopardy in that if he is imprisoned, it does not detract from the fact that he still has to pay the judgment debt.
2. It heaps on the Judgment Creditor additional burden of shouldering the maintenance (feeding expenses) of the Judgment debtor if he is so imprisoned and it cannot exceed a given period (6 weeks).
3. It is too tedious in that in the long run the Judgment Creditor may still fall back to a writ of fifa by selling property or committal by imprisonment all in a bid to get the judgment debt satisfied.

GARNISHEE PROCEEDINGS

1. It is cheaper and faster in that much of physical industry is reduced to the barest minimum. It is more of paper work in the court.
2. Since the 1st step is ex-parte application without the notice of the Judgment Debtor and or garnishee, it takes them unawares and so it is effective in attaching the goods or cash in the possession or custody of the Garnishee.
3. The Judgment Creditor with minimal efforts gets the judgment debt easily satisfied.

Disadvantages

1. The Judgment Creditor may encounter some obstacles like where the Garnishee turns out to want to fight a proxy war for the Judgment Debtor – see **G. T. B. v. Innoson Motors Ltd. (supra)**
2. It demands some due diligence on the part of the Judgment Creditor to know who has a debt that is due to the Judgment Debtor.

WRIT OF POSSESSION

1. It enables the Judgment Creditor to regain vacant physical possession if he so wishes of his real property or with any developments that is on it if he so desires and uses it the way he likes.

Disadvantages

1. It comes with a lot of physical resistance by those asked to vacate or surrender possession.
2. In the process it is expensive in that the Judgment Creditor has to cough out money to ensure that adequate security is on ground in order to deliver or put him in possession.

COMMITTAL PROCEEDINGS:

Advantages

1. More often than not it brings about speedy compliance with the order of the court in that the Judgment Debtor or his relations or associates do all what is humanly possible to bring him out of prison.
2. The Judgment Creditor does not spend much and all he does is to keep to the necessary protocol. The Judgment Creditor in my view is not to pay for subsistence money because the Judgment Debtor is there even though at his instance but as a contemptonor of the court order. That is why in terms of appeal, the Attorney-General is normally the Respondent.

Disadvantages

1. It reduces the dignity of the Judgment Debtor or his standing in society.
2. It is a stigma on him as far as our legal jurisprudence is concerned.

3. It makes the Government spend money in maintaining him in prison which could have been channeled to other uses.

WHAT ARE SOME OF THE BEST PRACTICES

1. The Registrar must indicate the date and time an application for execution is made. This would ensure that in case of multiple applications, the order of priority can be seamlessly ascertained.
2. Bailiffs must be made to subscribe to oath of faithfulness in carrying out their duties see S. 6 SCPA.
3. Ensure that there is an application in the first place by the Judgment Creditor or his counsel to avoid allegation of bias and the j/debt must be due in the first place.
4. Protocol must be observed as to the period of notices, time of attachment and sale, venue, mode of attachment and sale and sequence of disbursement of money realized from such sales.
5. Inventory of items attached must be taken and kept with a copy availed the Judgment debtor.
6. Must appoint Appraisers who must value property before eventual sale/auction.
7. Ensure that returns are made on all writs issued for execution to the Registrar. This includes returning the writ and rendering account of all that transpired or money realized.
8. Where the property is immovable and the judgment debt is that of a lower court, leave of the High Court must be obtained and the execution to issue from the High Court.
9. The Registrar must at all times indicate the judgment sum on each writ that is issued and to make due entries of all amounts realized from any execution.
10. A beauteous thing to do would be for a dedicated account be opened to make payments of moneys that cannot be speedily paid to the Judgment Creditor for one reason or the other, preferably an interest yielding account.

11. Tapping into technology to determine the ownership of some types of properties of the Judgment debtor as well as online publicity of auctions, e-payment of j/debts, etc.

CHALLENGES FACED IN THE COURSE OF EXECUTION

1. **Pending Appeal:**

The law is that even though an appeal is not a reason for stay of execution, courts are warned to exercise some caution because in some instances, execution would extinguish the life that is in any appeal.

2. **Applications for Stay of Execution**

Application for stay of execution halts execution.

3. Application to set aside execution is a hindrance.

4. Interpleader Proceedings is another setback.

5. **Incurring Liability:**

Where the executioner steps out of the lane in the course of carrying out execution and in such situation the bailiff is absolved from liability.

6. **Place Where To Keep Goods Seized;**

Where the court has no warehouse and the properties are massive, keeping them for the required minimum days before sale can be a problem to the extent that some items get missen.

7. **Resistance to Execution.**

This may be physical where by thugs are assembled to assault enforcers. It is advisable that the police and other sister security agencies are invited to curtail any envisaged violence. It can also be by withholding necessary information from the j/creditor or executioners.

8. **Undervaluing Seized Property.**

It occurs where no appraisers are involved.

9. **Selling auctioned items to friends, relations or court staff.**

This is against the code of conduct for court employees and affects the image of the judiciary negatively before the society.

RECOMMENDATIONS

1. The employment of Appraisers must be made a priority.
2. Establishment by way of Administrative fiat a strong Execution/Enforcement Department under the supervision of a fit and proper person/staff.
3. Construction of warehouses if need be to keep attached goods/properties.
4. Employment of fit and proper persons as bailiffs who on appointment must subscribe to oath of fidelity.
5. Employment of Sheriff or Deputy Sheriff distinct from the Chief Registrar must be done so that there is no conflict or overlapping of function.
6. Embrace technology to lessen the rigours of the duties of execution.
7. Attitudinal change.
8. Amend the extant legislation to strengthen crooked lines.

Over and above all, if the human beings charged with these responsibilities do not put in the right attitude or mindset, then attempt to put to practice or implement the above recommendations would amount to naught. I trust that is not our vision and mission for the offices we occupy. I thank you for your rapt attention and active participation.

HON. JUSTICE D. D. ADECK
High Court, Lafia