

**EXECUTION OF JUDGMENT AND ORDERS/PRACTICE AND
PROCEDURES**

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***BEING A PAPER PRESENTED AT THE REFRESHER COURSE FOR
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EXECUTION OF JUDGMENT AND ORDERS/PRACTICE AND PROCEDURES

I feel highly honoured and privileged standing before you distinguished participants to serve as a resource person. I wish to express my profound gratitude to the Administrator of the National Judicial Institute (NJI), My Lord Hon. Justice R.P.I. Bozimo, OFR, and the education committee for giving me the opportunity to present this paper and also my thanks goes to the Institute Secretary, Director of Studies, Director of Research, and the Deputy Director of Studies for finding me worthy as a resource person.

PREAMBLE

From time immemorial, the Law Court has been recognized as a bastion of hope, especially to the poor and downtrodden, adjudicating between or among contending parties and interpreting the laws of the land as part of its core functions as an independent judicial arm of government, and as required by prevailing constitution.

As judicial staff, I am sure we are not oblivious of the fact that when lawyers or litigants approach the court of Law, it is basically for one purpose, Justice. The law Court has not only been viewed as the last hope of the commoners, but could aptly be described as a strong shelter in times of oppression or repression.

Put briefly, the law Court is a temple of Justice, where lawyers approach to seek relief or to enforce their fundamental rights in times of oppression and adversity. Therefore, Justice has been variously defined and expressed in diverse forms. Generally understood to mean what is right, fair, appropriate and deserved. Justice is said to be

achieved when an unjust act is redressed and the victim feels whole again. For a Court of Law to appropriately discharge its constitutional functions, the judicial process must be transparent, such that justice must not only be done, but must be seen to have been done. In addition to the fact that court Judgments /Rulings, Orders are promptly and appropriately complied with, such that the beneficiaries enjoy the fruit of their hard won victory.

The successful enforcement of court judgment therefore, is the culmination of a judicial process. Non-compliance with Court Judgment/Ruling or Order of Injunction by the court of subordinate jurisdiction under the guise of appeals to the court of superior jurisdiction no doubt, amounts to slowing down the wheels of justice.

In this regard, the topic:-“***Execution of Judgment and Orders/Practice and Procedures***” is apt and germane to our socio-political development and of particular importance to judicial staff in Nigeria.

COURTS OF RECORD

In common law jurisdictions, a Court of Record is a Judicial Tribunal having attributes and exercising functions independently of judicial officer designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a personal memorial. Judgment of a High Court is normally subject to appellate review by the Court of Appeal in our Constitution. In many jurisdictions, Courts that have the power to fine or imprison, must be courts of record. In almost all jurisdictions, a Court of record will have its own unique Seal, which is used to authenticate its Judgment and copies of record.

In Nigeria, the superior courts of record are the Supreme Court, the Court of Appeal, the Federal High Court, State High Courts, and the High Courts of the Federal Capital Territory, the Customary Court of Appeal of the Federal Capital Territory and the Customary Court of Appeal of a State. Recently, the National Industrial Court was also accorded the status of a superior Court of record.

THE POWER OF A JUDGE:-

The power to sit on a matter and decide same in accordance with codified and known laws or rules is vested in the judiciary, the third arm of Government. The judiciary through its functionaries exercises judicial powers of the federation and of the state. Section 318 Constitution¹ makes for the functionaries that perform judicial functions. They are therein called judicial officers who are judges of the Federal Courts and of the High Courts of the State. They are also known as judges of the Superior Courts. Apart from these, there are also magistrates and Judges of Customary, Area and or Sharia Courts also known as Judges of Lower Courts. Basically judicial officers as well as the Magistrates, Area, Customary and or Sharia Courts Judges' duties are adjudicatory, that is, the hearing of dispute or cases between government or authority and any person or between persons themselves in the country and decides them in accordance with existing and known laws. In short, a court hears and decides cases brought before it and eventually enforces its decision. It is the capacity to enforce or execute its judgment that makes out or distinguishes courts with judicial powers from other bodies or institution of state without such powers. One would therefore without any fear of contraction say that judgment

¹ 1999 Constitution of the Federal Republic of Nigeria as Amended

enforcement or execution, whether in the superior or lower court is of the essence of litigation generally. No litigant, be it a government agency, a corporate body or an individual in its/his/her right frame of mind will have recourse to the courts if he or she knows that the outcome of such litigation (Judgment) are not to be executed, or enforceable. Rather, aggrieved parties will not patronize the courts; they are likely to adopt the “do it myself” syndrome, thus leading to the undesirable, which is anarchy. Enforcement of judgment or execution being the end-product of litigation or adjudication should therefore be treated with all the importance it deserves.

THE CONCEPT OF JUDGEMENT

It is relevant for us to know what a judgment is in order to appreciate the issues under discussion i.e. its enforcement. The Longman Dictionary of Contemporary English² defines the term “**Judgment**” among other things to be “**An official decision given by a Judge or a Court of law.**” And that it is: “Something unpleasant that happens which seems like a punishment for the things you have done wrong.”

One could also say that a judgment is the verdict or decision that a court of law arrives at after it must have heard and reviewed all the facts and issues as well as the law presented before it by litigants, disputants or parties on both sides of a case which decision is required to and or must contain findings and resolutions on all the material fact or issues. A Judgment therefore must not suffer any ambiguity.

Legally, a judgment was defined in the case of **Osafire Vs. Odi**³ where it was held that the word “**Judgment**” in its ordinary usage connotes the

² New Edition (1995) page 769

³ (1990), 3 NWLR, 130 at 153.

resolution of a person with respect to a cause of action between competing alternatives. The word “**Judgment**” therefore connotes a binding determination of a court or tribunal in a dispute between two persons. The determination is enforceable by the exercise of the coercive jurisdiction of the courts at the instance of the party in whose favor the judgment has been made (or reached).

Hence, the term “Judgment” or “Order” connotes any decision given by a Court on a question(s) at issue between the parties to the proceedings properly before the court. The Supreme Court in the case of **Saraki & Anr. V. Kotoye**⁴ defined the word “Judgment” as: “***A binding, authentic, official, judicial determination of the Court in Respect of the Court in respects of the claims and in an action before it.***”

By virtue of section 318 (1) of the Constitution⁵, as amended, which is the interpretation section, the meaning given to the words “Decision” has not been restricted but enlarged to settle doubt or to prevent any oversight of legislative intention. Therefore, “Decision” “has been defined to mean in relation to a court or any determination of that court that includes judgment, decree, order, conviction, sentence or recommendation”.

Therefore, a Judgment can be final or interlocutory. A Judgment is only final when it is obtained in an action by which an existing liability of the Defendant to the Claimant is determined on merit and vice versa.

⁴ (1992), 9 NWLR (Pt 264) 1 56

⁵ *ibid*

The Court of Appeal, per Ogundare JCA (as he then was) quoted with approval of the opinion of Lord Anderson CJ in the case of **Bozson Altrincham Urban District Council**⁶.

“It seems to me that the real test for determining this question ought to be this: does the judgment or order as made finally dispose of the right of the parties. If it does then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion an interlocutory order”

A judgment is brought about when an aggrieved person comes to court by filing a case at the Court Registry either through his lawyer or by himself and which same is assigned to a judge and the matter is adjudicated upon by the Judge. The Court, upon a proper valuation of the evidence presented before it either through examination in-chief and cross examination of witnesses at the trial (in case of a Writ of Summons or affidavit of evidence in the case of Originating Summons), arrives at a decision. All proceedings of Court must be recorded in the case file which also has the Judge’s notes. That is why the courts are referred to as Courts of record.

Therefore, a successful litigant that is, the Judgment/Creditor is entitled to commence enforcement of the Judgment and that is only when there is no voluntary compliance with the judgment by the judgment Debtor, then execution of the judgment becomes necessary, indeed inevitable. Who the functionaries are, and the roles they play that is the focal point the title to this lecture seeks to capture. The target officers are non other than the court Registrars, Bailiffs, Process Clerks and other Administrative Staff, who are assembled here today.

⁶ (1903)1 KB 547 @ 548

THE CHIEF REGISTRAR/DEPUTY CHIEF REGISTRAR, (SHERIFF/DEPUTY SHERIFF), BAILIFFS, AND ADMINISTRATIVE STAFF.

The above are principal Administrative officers. In the English common law courts, these officers double up as sheriffs and probate Registrars as well.

A Sheriff is defined in the Black's Law Dictionary⁷ as, inter alia...an officer who in most jurisdictions act as custodian of the country jail, executes Civil and Criminal processes and carries out judicial mandates.

A deputy sheriff on the other hand is defined in the same dictionary as an officer who, acting under the directives of a sheriff, may perform most of the duties of the sheriff's office.

It's clear that the Chief Registrar/Sheriff's functions are enormous. The Chief Registrar is the chief record keeper, Chief Sheriff and Chief Executor of all court orders. He is the accounting officer. He is the administrative head of the Judiciary answerable only to the head of the court from whom he takes instructions and directives. The functions of the Chief Registrar are therefore both statutory and Administrative. His statutory functions can be found under section 7-12 of the sheriff and Civil process Law⁸ and Order.1 Rule 2 and Order.12 Rule 33 of the Supreme Court Rules.⁹

Registrars.

At the level of the lower courts (i.e the Magistrates, Area, Customary and Sharia Courts), the registry is headed by the Registrar of court who

⁷ Ed. By Bryan A. Garner 9th ed. (U.S.A Thomson Reuters 2009) 918

⁸ Cap 123 Laws of Northern Nigeria 1963

⁹ 1999

supervises the bailiffs and clerks of court and ensures that a valid judgment rendered down by the court is obeyed and or enforced.

It is of utmost importance to state that the central Registry of the court should be manned by experienced staff in order to make for proper record of court documents or processes.

The Chief Registrar as Sheriff and his deputy down to the registrar of courts at the lower Court level together with the bailiffs who perform the primary duty of enforcing or executing judgments of the court must collaborate with the court or in the judiciary. Their work, though not adjudicatory, is complementary to the judicial function of the judge or magistrate and, without them; the delivery of quality justice would be a herculean task to attain. All of them are involved in one way or the other in the day to day activities in the judiciary or in short, justice administration. Therefore individualistic tendencies should be eschewed and avoided with every resolve in order to attain the summit of satisfaction in the dispensation of justice. What is being put across here is that administrative officers are in partnership with judicial officers or those others who perform judicial functions in the administration of justice because they invariably, are part of the success or failure of the judicial system.

ENFORCEMENT OF JUDGEMENT OF COURT.

Enforcement is defined as “the act or the process of compelling compliance with a law, mandate, command, decree, or agreement.” Therefore, literally the enforcement of judgment is the act or process by which a Court’s Judgment, Rulings and Orders and other decisions of Court are been implemented. A Judgment may require payment by one

person to another or into Court a sum of money or it may require a person to do or to abstain from doing a particular act or acts.

The process of enforcement is broadly referred to as execution. Lord Denning aptly summarized the process when he stated in the case of **Re: Overseas Aviation Engineering (GB) Ltd¹⁰**.

“Execution means quite simply the process for enforcing or giving effect to the Judgment of the court..... In case when execution was had by means of a common law Writ when such as fieri facias..... It was legal execution; when it was had by means of an equitable remedy, such as the appointment of a Receiver, then it was equitable execution because it was the process for enforcing or giving effect to the judgment of the Court.”

As mentioned, enforcement is the last stage of the judicial process after the legal right, claim or interest has been determined on the merit in a Judgment or Order by the Court which remains to be enforced.

Every judgment of the court must be obeyed and is effective from the date of its delivery or from such a date stated in the judgment itself. The Judgment is meant to be obeyed without demand and if there is default in obedience, after a period of grace which can be between three to fourteen days as the rules may prescribe, the Judgment Creditor is entitled to commence enforcement proceedings. A judgment of a Court of competent jurisdiction, it must be noted is valid until set aside on appeal and as such must be obeyed. See the case of **Okoya v Santili¹¹**

¹⁰ (1963) CH 24 at pp 39,40

¹¹ (1990) 3 NWLR (pt 131) 172

A Judgment of Court may be enforceable or unenforceable. The method of enforcing a particular Judgment will depend upon the type of Judgment that particular Judgment is. We have the sheriff and Civil process Act¹² and the Judgment (Enforcement Procedure) Rules made under the Act, applicable.

EXECUTORY JUDGMENT

The forgoing can be classified as Executory Judgment. See the case of **Okulate v Awosanya**¹³ and the case of **Okoya v Santili (Supra)** Supreme Court Decision defined 'Executory Judgments' *as those judgments which declare the respective rights of the parties and then proceed to order the defendants to act in a particular way; for example to pay damages or refrain from interfering with the Claimants' rights. The Supreme Court went further to say that such Judgment is enforced by execution if disobeyed.*

DECLARATION JUDGMENT

It must be noted that there are some Judgments that do not require enforcement or which are incapable of being executed as the judgment. These are called declaratory Judgments. Declaratory Judgments or Orders merely proclaim or disclose the existence of a legal relationship and do not contain any order which may be enforced against the Defendant. See again, the case of **Okulate v. Awosanya (Supra)** Declaratory Judgment is dormant. Hence, they neither have force of execution in the judgments nor Orders. Again, in the case of **Government of Gongola State v. Tukur**¹⁴ the Supreme Court stated:-

¹² Cap S.6 Laws of the Federation, 2004

¹³ (1992) 4NWLR (pt.235) 280

¹⁴ (1989) 4 NWLR (pt 117) 592

“A Declaration simpliciter is a solemn affirmation of a state or a status by a court that in itself is a complete relief which is not executory”

CONSENT JUDGMENT

Other category of judgment is consent judgment, capable of being enforced and binding. By virtue of section, 241 (2) (c) of the Constitution¹⁵, it appears that a judgment of Court of Record made with the consent of the parties means a judgment made after a formal agreement by the parties themselves and their counsel respectively and which terms shall be incorporated in the Courts Ruling with the consent of the parties and which is made judgment of the Court.

It includes a judgment where a Defendant submits without a contest before the Court. This excludes a judgment which the Court deliberately reaches in the exercise of its adjudicative functions after considering the case of the parties, the evidence in support thereof and the submissions of counsel. See the case of **Abdulkarim v. Incar (Nig) Ltd**¹⁶

PROCESS OF EXECUTION OR ENFORCEMENT OF COURT JUDGMENT:

The baton of the race in the dispensation of justice primarily is first performed by a judicial officer who next hand it over to the non-judicial officers to complete the race until the tape is reached. The race is completed only when the fruits of the judgment obtained are reaped. The role played by the judicial staff (the register etc) becomes important most times when a person against whom the judgment of the court is pronounced refuses or fails to comply with what he is

¹⁵ 1999 Constitution of the Federal Republic of Nigeria as Amended

¹⁶ (1992) 7NWLR (pt 251) 3

ordered to do therein. It is then that the judgment of the court is enforced or executed on him.

The execution or enforcement of a judgment which follows the logical pronouncement of the same by the judge or magistrate must therefore be taken seriously as it is one of the most important aspects of the administration of justice in any society where the rule of law thrives. However, it is necessary, depending on the contents of any particular judgment that before it is enforced or executed it should be clear and positive on the orders made by the Judge or Magistrate therein. This is because some judgments which may be declaratory in nature do not require enforcement or cannot be executed. See the case of **YARO VS AREWA CONSTRUCTION LTD**¹⁷

The Supreme Court in the case of **Government of Gongola State v. Tukur (Supra)** Judgment in its interpretation of Sheriffs and civil Process Act and the (Enforcement Procedure)¹⁸, itemized the methods of enforcing different kinds of Judgment as follows;

- I. *A Judgment or Order for the payment of money may be enforced by a Writ of Fieri facias, Garnishee proceedings, a charging Order, a Writ of Sequestration or an order for committal on Judgment debtor Summons.*
- II. *A Judgment for possession of land may be enforced by a Writ of Possession, a Writ of Sequestration or Committal Order.*
- III. *A Judgment for delivery of goods may be enforced by a Writ of specific delivery or restitution or their value, a Writ of Sequestration or Writ of Committal.*

¹⁷ (1998) 7 NWLR (pt.558) 368,381

¹⁸ Cap S6 LFN 2004

IV. *A judgment ordering or restarting the doing of an act may be enforced by an order.*

An interlocutory order restraining the doing of an act may be enforced by an order of committal.

The Sheriffs and Civil processes Act and the judgment (Enforcement procedure) Rules¹⁹, its subsidiary legislation makes adequate provision for the enforcement of Judgment in Nigeria. See item 57 in the 2nd Schedule Part 1 in the Exclusive Legislative List of the Constitution. Section 4, of the Constitution²⁰ gives exclusive legislative power to the National Assembly only to make law on item 57 of the Exclusive Legislative List. This is why the State House of Assembly does not legislate on item 57.

WRIT OF FIFIA

This is one of the most commonly used writs in terms of execution. It is invoked where the judgment/order of the court involves a sum of money. It is carried out by attachment and sale of properties of the judgment debtor. The judgment creditor initiates it by applying to the court registry for execution of the judgment he has in his favor. The registrar of the court completes the writ which must contain among other things the judgment sum, the fees paid, cost awarded and the cost of the execution and take it to the judge to sign. The court officer so scheduled must keep a book and make entries as to the time the application was made which must also be reflected on the writ. If you have more than one for execution, such writs would be executed in the order that they were entered in the book. The next step to take would

¹⁹ ibdi

²⁰ ibdi

be the distress and seizure of the moveable property of the judgment debtor except his wearing apparels, beddings and that of his family and tools for implements of his trade worth value of Five Pounds.

Interestingly, under the Area Courts system, once a judgment is not enforced within two years, then the leave of court must be sought before it can be enforced. Additionally, an inventory of the properties must be taken and signed by the bailiff and the judgment debtor.

Equally, money, bank bonds, promissory notes, bills of exchange, bond, specialties or securities for money could be levied execution. Upon seizure of these monetary instruments, the law allows the sheriff to hold same as security for the judgment creditor and further allows the said judgment creditor to sue in the name of the judgment debtor or in the name of a person in whose name the judgment debtor might have sued for the recovery of the sum secured or made payable thereto.

It is expected that the seized moveable properties would be kept in a safe place by the bailiff or with such a fit person or in such a fit place as may be directed by the sheriff or Registrar.

SALES OF SEIZED GOODS

By virtue of the provision of S.29 (1) of the Law²¹, attached moveable properties cannot be auctioned until 5 days after the date of such attachment. The exception is that if the properties are of perishable nature or the judgment debtor on his own in writing so request, then same can be sold before the stated period.

Further, under the Rules, the judgment debtor can also in the presence of two witnesses request that his attached properties be sold before

²¹ The Sheriffs and Civil Process Law Cap 123 Laws of Northern Nigeria

the stipulated period. It should be noted that where the sale cannot be completed within a day, same can be adjourned for a further period of not exceeding three days and so as often as necessary. In addition, the sale can be postponed for a period not exceeding 21 days. Under the Area Court system, the rules allow for such postponement for a period not exceeding 28 days²².

While the sale must be between 7:00a.m and 8:00p.m other than on a Sunday and public holiday there must be date of the auction either at the principal court house within the Division or District or the nearest court to the place where the attachment took place. Should there be no court house within 5 miles of where the attachment took place, then the court can direct as to where the sale should hold.

Publication of the sale must be made 4 days before the day set aside for the sale. The highest bidder must have the bell knocked down for him. It is salient to stress that the notice of the date of the sale must be pasted at the **door of the court house or in a newspaper** as the court shall direct.

During execution, it might be discovered that more than one writ has been issued over the same properties, in that case the order of priority as to the timing of the application for enforcement would be adhered to. Herein lies the wisdom in the provision dealt with earlier the register shall enter on a book kept for that purpose in the Registry or on the writ of fifa the time the application for enforcement was made.

EXECUTION AGAINST IMMOVABLE PROPERTIES

²² Order 19 Rules 4(b) Area Courts Civil Procedure Rules 1972

If no movable or sufficient movable properties of the judgment debtor can be found or traced to settle the debt, the judgment creditor may apply for the immovable property of the judgment debtor to be attached and sold to meet the judgment debt. Other than the High court, execution cannot be made to lie outside the District Court's jurisdiction.

If for any reason, the judgment debtor has no right under any native law and custom to alienate any building owned or occupied by him, then same cannot be sold but where he has a right, interest or title in materials used in the building, such can be sold subject to the leave of the court on such terms or conditions as may be stipulated by the court.

Peradventure, there is any irregularity in the sale of such immovable property and which is injurious to someone, such sale can be set aside within 21 days. As soon as the sale is set aside, the sale is cancelled and the purchaser's money refunded and if otherwise, then it is affirmed. In law possession is 99% prove of title, hence it is expected that the court would proceed to ensure physical possession by the purchaser and certificate of purchase should be promptly issued to him. Time and again it has been noticed that where title documents are not issued in favor of the purchaser, a person who was not an interpleader could even for mischief embark upon litigation to challenge the valid purchaser. This position was lamented by his Lordship Aniagolu JSC (Rtd) in the case of-

Cardoso Vs. Daniel (1986) 2 S.C491 at 492.

Where he said,

“What has been perplexing in the case is why the then Supreme Court (the High Court) has not taken steps to perfect the title of the purchaser from court (John St. Mathew Daniel) under the public auction sale by issue of certificate of title to the purchaser who, from then on, would have the certificate as his root of title... making it impossible for any subsequent claimant/challenger, who are not interpleader before the court to succeed in disturbing the purchaser.”

Mention must indeed be made that where the immovable property is a right of occupancy, consent to alienate under the relevant laws must be first sought and obtained.

It is the position that where the parties are Muslims, the court should be guided by Islamic principles relating to such sale.

EXECUTION OUTSIDE JURISDICTION.

Let it be kindly noted that where the properties of the judgment debtor to be attached are outside the jurisdiction (territorial) of the court that delivered the judgment, the Registrar of the issuing or home court shall cause to be delivered the endorsement thereof to the registrar of the other court. The Registrar or court officer of the receiving court shall act in all material respect by carrying out the execution, as if it is a writ emanating from his own court.

After the execution of the said writ the officer of the receiving court shall within the **prescribed** period inform the Registrar of the home court of the execution of the writ and shall pay into the home court all money recovered in the process. The Judge of the receiving court shall

have the same powers as regards stay of execution as the judge of the home court. In any case, all the procedure that relates to attachment and sale of properties whether movable or immovable shall be adhered to by the other court as if it is the issuing court.

INTERPLEADER PROCEEDING OR CLAIM ON ATTACHED PROPERTIES

Occasion may arise whereby after the attachment, whether of movable or immovable properties of the judgment debtor, a claimant or third party may emerge to assert that the attached properties do not belong to the judgment debtor. This is called *interpleader proceedings*. In such a situation the claimant is expected to deposit with the court officer concerned the monetary value of the properties in issue, or give the costs (where allowed) of keeping possession of that property or give security for the value of the property claimed which shall be paid into court to await the decision of the court on the claim. If in any case no such money worth the value of the properties is paid or security given, the properties shall be sold and the proceeds paid into court to abide by the decision of the court – see Section.33 of the Law²³.

By and large, this provision is of salutary effect in that it seeks to curb situations whereby a judgment debtor would connive with some bogus claimants to seek to stultify the realization of the fruits of labour. It ensures that bogus claimants are warded off.

In the event that a claimant emerges, the Registrar issues a summons to the judgment creditor and to the claimants as well to appear on a fixed date and be heard on the claim. Where the court is satisfied of the claim, the sale is cancelled but if otherwise, then the sale would hold. It should be noted that a claim such as the one stated above ipso facto

²³²³ Sheriffs and Civil Process Law Cap 123 Laws of Northern Nigeria

operates as a stay of any action arising out of damages allegedly caused in the process of execution.

WHERE THE JUDGMENT DEBT AS A RESULT OF TENANCY

Permit me to highlight that the law allows a landlord at whose instance execution is levied, to claim arrears of rent from his tenant at the time attachment is being made by personally through his agent in writing make such claim stating the amount being owed and the time of the tenement within 5 days after the seizure or the removal of the seized goods. Where the landlord does as stated above, the Bailiff shall seize more properties of the judgment debtor but shall not sell before 5 days after such seizure. However if the properties seized are of perishable nature or the judgment debtor in writing so request he can sell before the said 5 days.

Also where the required days expired, the Bailiff or court officer shall sell same to offset:

- a) The costs incidental to the sale;
- b) The landlords claim not exceeding four weeks rent where the tenement is for any other period less than one year;
- c) Two terms of such rent if the tenement is for any other period less than one year;
- d) A year's rent in any other tenement; and
- e) The amount for which the writ of execution was issued.

Flowing from the above and after the sale, the costs of execution, fees paid, costs in the suit and the actual judgment sum must first be settled after which the residue (if any) is given back to the judgment debtor. It is expected that properties sold that are the subject of a lien or in the

possession of some other party to whom the judgment is entitled to reversion; such a person shall be timorously notified to deliver possession to a purchaser immediately.

JUDGMENT SUMMONS

When the judgment debtor defaults in paying his judgment debt, the judgment creditor may apply to the court and the court may issue a judgment summons to the judgment debtor for him to come to court, wherein he would be examined on oath on his ability to pay the judgment debt or not and whether or not the judgment debtor shall appear, if the judgment creditor has his witnesses in court, they would be examined.

Further to this, where there is apprehension that a judgment debtor is likely to escape to avoid the examination above stated or to avoid the payment of the judgment debt, he could be arrested and even imprisoned subject to such adjournments as the merit of the case would demand and subject to such orders that may be made to preserve the property of the debtor, in the process, the court may make the following orders:

- I. An order for instalmental payment;
- II. An order for the attachments and sale of the property of the judgment debtor;
- III. An order committing the judgment debtor to prison;
- IV. An order discharging the judgment debtor from prison.

Most salient is the fact that we must know that this summons can be issued before the machinery is set in motion for execution of the judgment of the court by way of attachment and sale, or before the

process of committal to prison or even while the judgment debtor is in prison as a result of committal for non compliance with the judgment/order of the court. It would seem that its usage is dictated by the circumstances of each case and at the instance of the judgment creditor.

GARNISHEE PROCEEDINGS

The invocation of the jurisdiction of the court this way is made upon an ex-parte application where the judgment creditor alleges that a sum of money in the hands of a third party which is due to be paid to the judgment debtor should be paid to the court for his benefit. In this instance, the third party is called the garnishee. It is a prerequisite that a notice must be served on the judgment debtor and the third party or garnishee 14 days before the hearing of such application. The service of an order nisi is sufficient to bind such debt in the hands of the third party.

If the debt sought to be garnisheed is in the hands of a public officer then the consent of the Attorney-General and Commissioner for Justice must be sought or if in custodia legis, then the consent of the court must be sought. Under the rules, where the amount sought to be garnisheed is so small as to appear vexatious, the proceedings shall not be resorted to.

WRIT OF POSSESSION

This is a writ used mostly where the judgment is over title to land or other immovable property. The writ commands whoever is in possession to vacate same for the person named therein. The essence of this writ cannot be overemphasized, because where the land or

landed property is not yet in the hands of the judgment creditor, then a lot more would still need to be done.

Under Section 24 of the Law²⁴, in enforcing possession, it is not necessary that all things found on the land must be removed. It appears to me that the rationale behind this provision is that were it to be the requirement, it would at times be impossible to put the judgment creditor in possession and more importantly, the doctrine of ***quic quid plantatur solo – solo cedit*** operates i.e he who owns the land also owns what is on it or whatever is affixed to the land belongs to it.

The provision of the Rules, provide further that where a third party is dispossessed of land or other immovable property and he claims it was wrongly done because he was on the land or property on his own right or account, or the property was not included in the judgment/order or if included, he was not a party, he can within 14 days of such act challenge it in court wherein the court is enjoined to treat same as if it is a suit between the parties and make the right order at the end of the day.

ORDER OF SEQUESTRATION

It is a judicial writ commanding the Sheriff or other officer of the court to seize the goods or properties of a person named in the writ. It is issued sometimes against a party who has defaulted or acted in contempt of the court. It is normally done for the benefit of the judgment creditor. It also means depositing of a property in issue pending the outcome of the suit with some other person called the sequester.

²⁴ Sheriffs and Civil Process Law Cap 123 Laws of Northern Nigeria

ORDER OF SPECIFIC DELIVERY

As the nomenclature suggests, it is meant to compel a person or party to specifically deliver certain properties in his possession to the other party failure of which could be met by committal prison.

EXECUTION OF JUDGMENTS /ORDERS IN CRIMINAL TRIALS.

Generally in criminal trials, the judgments/order of a court is a mere discharge, a discharge and acquittal or a conviction. Where (and in some cases), a discharge, there is nothing to execute as the accused person is set free even if not on merit. Similarly, where the accused person is discharged and acquitted, he is set free and there is nothing to enforce.

However, if conviction is secured, the sentence among other things could be a fine, a term of imprisonment or both fine and imprisonment or fine and in its lieu imprisonment, detention in a reformatory home, canning, death sentence and haddi lashing. See Section.68 of the penal code.

It is pertinent to state that the Administration of Criminal Justice Act²⁵ addresses the problem of excessive use of imprisonment as a disposal method by introducing some alternatives to imprisonment. These include the introduction of suspended sentence, community service, parole and probation.

FACTORS THAT AFFECT ENFORCEMENT OF JUDGMENT.

Often time there is a clog in the wheel of justice administration through the process of enforcement of judgment by factors which are

²⁵ Section 453, 460 and 468 ACJA 2016

sometimes not caused by the court but by litigant. Some of these factors have long been identified as been a clog in a wheel of enforcement of Court Judgment in Nigeria.

Suffice it to point out that there are usually enormous challenges confronting the judge, the Sheriff, Deputy Sheriff and bailiff in the process of giving effect to judgments. It's part of the objectives of justice delivery to ensure that a judgment creditor reaps the fruits of his judgment. An unreaped judgment is no judgment at all. The following are some of the common factors inhibiting the quick or immediate realization of the fruits of judgments.

1. Executive Disobedience and Lawlessness: There is ever present in the body polity of this Country the tendency for those who man the Executive Arm of Government to disregard as well as disobey the judgments and orders of the courts of the land. The Executive have not only shown their dislike for court orders and judgments. This uncivilized and unlawful conducts constitute one of the greatest obstacles and bottlenecks to the enforcements of judgments and orders made by the court.
2. Most often, sharp legal practitioners in order to ensure that the fruits of judgments are delayed or not reaped at all employ these techniques frivolously or fraudulently. Usually they cause unnecessary delays in the hearing of these applications by baseless applications for adjournments.
3. The need for review and updates of our laws to suit presents realities. Our present laws in most of our jurisdiction are out dated.
4. Corrupt practice by Administrative Officers in the course of executing judgments. Registrars and bailiffs are often accused of

employing crooked ways in the course of carrying out attachments or auction sales. The commonest of these crooked ways are:

- (i) Fake service of court processes barked by false affidavits.
- (ii) Attachment of properties far in excess of the judgment sum. E.G collecting the whole of household items worth hundreds of thousands for a stipend judgment sum.
- (iii) Auctioning at ridiculously or outrageously low prices.
- (iv) Selling not to the highest bidder but to favoured or pre-arranged persons.
- (v) Auctioning secretly without advertising.
- (vi) Collecting money from prospective buyers in advance.

5. Lack of conducive working environment and adequate facilities: It is expected that attached properties be kept in a safe place pending their sale. Nowadays the court staff is not housed (office wise) talk less of properties. Additionally, facilities like towing vehicles would assist in execution but are lacking not to talk of constant electricity supply and deep freezers to preserve perishable items attached
6. Poor remuneration/funding: The pay package of a judicial staff is not a **take home pay**, it is **an office take spent!** Expectedly, where an officer is poorly remunerated, he cannot put in his best rather he would be looking for avenues where he can cheat the system or the court user in order to make ends meet. By the same token, since the Judiciary is not financially independent or adequately funded the minimum facilities needed for optimum output are not there.

7. Filing of Appeals and application for stay of execution. The provision of Section 241 of the Constitution²⁶ applies. In order to stop or delay a prompt execution of Court Judgment, some lawyers and litigants are found of filing motions for stay of execution frivolously to grossly abuse Court process or the constitution. Once parties are aware of the moves by the judgment creditors and the sheriff to levy execution, they are fast in rushing to their lawyers whose next line of action is always to file in court an application for stay of execution thereby frustrating the judgment. Although the court does not make a practice of depriving a successful party of the fruits of his judgment, where, however special circumstances exist, the court may grant a stay of execution in order to preserve the status quo.
8. Attempt to resist execution by the judgment debtor is another factor that affects the enforcement of court judgment. This is usually done by hiring thugs to stall the execution processes. This is very common when the execution is on immovable properties such as land.
9. The police sometimes also contribute to the delay in the enforcement of court judgment as they often complain of logistics such as vehicle. And since most of the execution cannot be done without the presence of the police, the judgment creditor in most cases must provide the logistics to move on. Where this is not possible, the execution will be delayed. At times too, petition writings also contribute to delay in execution of Court Judgment and enforcement of Orders. Some lawyers and even litigants are

²⁶ 1999 Constitution of the Federal Republic of Nigeria as Amended

fond of writing frivolous petition against Judges or even their fellow litigants.

Our law or the constitution in a way encourages a party to disobey court order or judgment. It is trite law that once a court makes an order which is clear and unambiguous it must be obeyed as parties are bound by it. They have a duty to implement the order. It does not matter whether the order made is proper or illegal. Any party who refuses to implement such subsisting order would not be giving a hearing in a subsequent application by him as long as the order remains disobeyed. This is founded on the common law principle that a party in contempt cannot take proceeding in the same cause for its benefit. See the case of **FATB v. Ezegbu**²⁷.

The above list is not exhaustive and constitutes material irregularity. It poses a great threat to the integrity of not only judicial Administration, but to the Administration of Justice as well.

In view of the foregoing, I am of the strong view that these and other related issues must be effectively tackled in the interest of justice administration and indeed, the legal profession. For public confidence to be entrenched in the judicial system, the judiciary must rise up to the challenge, in not only ensuring speedy dispensation of justice, but seeing to the fact that its decisions are enforceable and effectively enforced.

RECOMMENDATIONS

Having identified some observable lacuna in the relevant laws and probable impediments to a successful enforcement of judgments of

²⁷ 1992) 9NWLR 265 134

Courts of Record, it is therefore necessary to make some valuable recommendations on the need to make appropriate legislations or review of existing relevant legislations.

1. A careful examination of the provisions of the second schedule, Item 57, of the exclusive legislative list of the 1999 constitution which relates to service of process, enforcement or execution of court judgments, orders, decrees and decision of courts of competent jurisdiction, reveals some inadequacies especially with respect to its applicability at the state level.
2. Also worthy of note is the provision of section 241 of the 1999 Constitution and the need for appropriate review to stem the tide of manipulations and abuse it has been subjected to, and the dire consequence it portends for administration of justice. As mentioned earlier, experience had shown to a large extent, how parties who appeared not to be favored by court decision often deliberately disobeyed court orders or stall the enforcement of judgment under the guise of appealing against the ruling.
3. Judges, Magistrate and Kadis should also exercise judicially and judiciously their power with regard to granting Order of stay of execution of their judgment or orders. This discretionary power should not be abused. A judge conducting a trial therefore has the opportunity to see and hear witnesses in the case as the trial judge. It is therefore the right of the trial judge to ascribe value to the evidence before it. The trial judge thus acts on credible evidence and gives it a proper evaluation. See the case of **Ajiboye v. Ishola**²⁸.

²⁸ 2006 13 NWLR pt998 628

4. The court officers saddled with the responsibility of executing judgments/orders of court must acquaint themselves with the position of the law generally and especially as it relates to their schedules. This would make their work cheaper, faster and better for the court users as well as better the image of the institution. This could be done by way of seminars or workshops such as this.
5. That our employment mechanism must be strengthened to ensure that the right people and indeed competent ones are employed so that dishonest practices can be reduced to the barest minimum. i.e Bailiffs employed must administer the oath of office.
6. Code of Conduct for judicial employees must be imbibed. The code of conduct for court employees is a good piece of subsidiary legislation that if imbibed by staff, all would be well with the judiciary especially in surmounting the challenges faced during execution of judgments/orders.
7. Deliberate mechanism is put in place to block loopholes. Here it is advocated that there should be strict compliance with the requirement of keeping of books where the time a writ of execution is applied for, the fees paid, the costs of execution, etc are recorded so as to check manipulation of the figures to the detriment of either the judgment creditor or judgment debtor.
8. The judges themselves must Endeavour to ensure that their judgment/orders are clear i.e not ambiguous as to allow room for mischief makers to give it a meaning other than what it ought to be, this would make them easier for execution and would nip in the bud future likely multiple litigations.

9. Improved remuneration and funding. Concerted efforts must continuously be made to ensure that there is financial independence for the Judiciary to make room for improvement on the working environment and facilities. Where a court has no vehicle of its own to convey attached properties leaves the court staff at the mercy of the public transporter who could turn out to be interested in the case in way or the other. It also remains to be stated that where staff are well paid, they would maximally perform and instances of lapses noticed in execution would be drastically reduced.
10. Improve conditions of services.

CONCLUSION

The need for a successful enforcement of judgment of courts cannot be overemphasized. Therefore, as Judicial Staff, particularly the category of you who are attending this refresher course, it must be noted that the primary function of a Judicial staff like you does not start or end in preparing the execution of the court judgments, but includes the enforcement of judgment or orders made by the court.

The onus therefore, lies on all stakeholders to be diligent and vigilant and be accountable in the discharge of their respective duties. Judgments delivered by the courts of competent jurisdiction must be enforced to the later, irrespective of persons, group of persons or juristic persons, as the case may be. Justice, according to the popular maxim, must not only be done but manifestly be seen to have been done.

On the whole, these identified challenges are proposals in form of solutions are not exhaustive, it is hoped that they would go a long way in assisting us attain excellence as our goal.

In conclusion, while I urge you to accept my shortcomings, I hope your thoughts on this topic have been provoked. I thank you for the audience.