**JUDGMENT ENFORCEMENT PROCEDURE RULES.**

***BY***

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**PREAMBLE**

I feel highly honored 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, Hon. Justice Salisu Garba Abdullahi and the Director of Studies Barr. Abdulazeez Olumo for giving me the opportunity to present this Paper.

**INTRODUCTION**

The main purpose of adjudication is the pursuit of justice. This entails the resolution or determination of disputes between the parties by the court which has been vested with judicial powers to determine the dispute. In *A.G of Oyo State v. Fair Lakes Hotel Ltd*,[[1]](#footnote-1) The Supreme Court defined judgment as “The sentenced of law pronounced by the court upon the matter contained in the order”. Once court determines any dispute, it becomes authentic official judicial decision, binding on all partiers before the court.

Enforcement is the last stage of the judicial process after the legal right, claim or interest has ended in a judgment or order which remains to be enforced. It is the process whereby a judgment or order of court is enforced or to which it has made effective according to law[[2]](#footnote-2). Most judgment requires compliances with their terms. It is only in the case of a declaratory judgment which merely declares what the right of a party is, without imposing any sanction on a defendant or directing either of the parties to do anything that execution is not called for or levied[[3]](#footnote-3). Execution will be totally unnecessary where there is voluntary compliance with the judgment or order of the court.

It is trite that, every successful litigant is entitled to the fruit of his judgment. Therefore, the overriding function of judicial process of enforcement is to enable the judgment creditor (the person in whose favor judgment or order was made) reap the fruit of his judgment with a view to

obtaining for his satisfaction, compensation, restitution, performance or compliance with what the court has granted by way of remedy or relief 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.

The process of enforcement is broadly referred to as execution. Lord Denning aptly summarized the process, that:

*“Execution simply means the process for enforcing or giving effect to the judgment of the court. In case when execution was had by means of common law writ, such as FieriFecias. 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”*[[4]](#footnote-4).

The court will not take, in ordinary civil matters, any steps in the enforcement of its judgment. The process of enforcement is at the initiatives of successful party, to take appropriate steps to enforce his judgment or order against the judgment debtor (the person against whom judgment or order was made). In order to promote the rule of law, every judgment of the court must be obeyed until it is set aside or declared a nullity[[5]](#footnote-5). Where judgment of the court is not obeyed, the court that gave the judgment retains the jurisdiction to invoke its coercive powers to give effect to the judgment by ensuring that the party in whose favor the judgment was given has the benefits of the decision[[6]](#footnote-6).For the purpose of enforcing court judgment and order, there are the following officers; the Sheriff, the Deputy Sheriff (herein referred to, as the Chief Registrar), the Bailiff who serve the writ and perform other duties given to him by the Deputy Sheriff and the police officers for security to the enforcement officers.

The objective of this Paper is to examine the judgment enforcement Rules and execution of judgments and court orders in the High Court of the Federal Capital Territory, Abuja (herein as F.C.T High court, Abuja): procedure and challenges. In order to achieve the primary purpose of this study the research will also examine the procedures and measures adopted particularly by the Abuja High Court to ensure a successful enforcement of court judgments and orders in the territory and advancing the course of justice through effective court services in Nigeria.

**SCOPE AND STRUCTURE**

The scope of this research work deals essentially with the provisions of our organic law the Constitution of Federal Republic of Nigeria, 1999, the Sheriffs and Civil Process Act and Judgment Enforcement Rules 2004, which have elaborately discussed the enforcement of court judgment and order, Foreign Judgments (Reciprocal Enforcement) Act, 2004,High Court of the Federal Capital Territory Abuja Civil Procedure Rules 2004, among other relevant legislation, as they relate to the subject of enforcement of court judgment and order in Abuja High Court. However, efforts will be made to examine only the Enforcement of Civil Judgements and Court Orders in the High Court of the Federal Capital Territory. The emphasis here will be on the effects and influence of such development on the Abuja High Court

**THE LEGAL FRAMEWORK TO JUDGEMENT ENFORCEMENT IN NIGERIA:**

Section 287 of the 1999 constitution as amended makes provisions for the enforcement of decisions. It provides as follows: *287(1) The decision of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court.*

*(2) The decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Court of Appeal.*

*(3) The decisions of the Federal High Court, National Industrial Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts with subordinate jurisdiction to that of the Federal High Court, National Industrial Court, a High Court and those other courts respectively.*

The most crucial piece of legislation regarding enforcement of judgments is the Sheriff and Civil Processes Act[[7]](#footnote-7) (SCPA) and the Judgment (Enforcement) Rules made thereunder by virtue of Section 94.

The SCPA was first enacted as an Ordinance[[8]](#footnote-8) that applied throughout the country. With the advents of regions, it metamorphosed to Laws and Rules made by the regions, and with the creation of states, were inherited as laws and rules of the various states. Whilst the various states have the power to make their own laws and rules for the enforcement of decisions of courts, it must be noted that the various court civil procedure rules have next to no provisions for the enforcement of judgments.[[9]](#footnote-9) What happens in practice is that the provisions of the SCPA and the Rules were adopted by the various states, therefore the provisions of the SCPA are basically the same all over Nigeria. It is important to note that by virtue of Section 2 of the SCPA does not apply to customary courts.[[10]](#footnote-10)

**OFFICERS OF COURT RELEVANT FOR ENFORCEMENT CHIEF REGISTRAR/DEPUTY CHIEF REGISTRAR, (SHERIFF/DEPUTY SHERIFF), BAILIFFS, AND ADMINISTRATIVE STAFF:**

For the purposes of enforcement of court decisions, there are 3 principal officers of court concerned. They are the:

1. Sheriff
2. Deputy Sheriffs
3. Bailiffs

Judgments are executed by a variety of means ordering the Sheriff and deputy sheriffs to do what is necessary to enforce the order or judgment of court. The bailiffs serve the writs conveying the orders of court as well as other responsibilities necessary to give effect to the other of the court.

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 Dictionary[[11]](#footnote-11) 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. The SCPA provides in Section 3 thatthere shall be appointed for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person to be the sheriff for the State or for the Federal Capital Territory, Abuja. In practice, the Chief Registrar of the State High Court is the Sheriff of the state.[[12]](#footnote-12)

Section 4[[13]](#footnote-13) also states, “There shall be appointed for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person to be the deputy sheriff who shall be subject to the general control and direction of the sheriff.”

In practice, the deputy sheriffs are the registrars of the Chief Magistrate courts. The duties of the deputy sheriffs are similar to those of the sheriffs.

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 Law[[14]](#footnote-14) and 0rder.1 Rule 2 and 0rder.12 Rule 33 of the Supreme Court Rules.[[15]](#footnote-15)

**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 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. 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, literarily 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) Ltd*[[16]](#footnote-16).**

*“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 fiery 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 is valid until set aside on appeal and as such must be obeyed. See the case of ***Okoya v Santili*[[17]](#footnote-17)**. 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 Act[[18]](#footnote-18)

and the Judgment (Enforcement Procedure) Rules made under the Act, applicable.

In furtherance of advancing justice through effective court services, we have an established centralized Enforcement unit now, the Enforcement Department in 2010, in the High Court of the Federal Capital Territory, main headquarter, Maitama, Abuja, for the enforcement of all High Court judgment and order, enforcement of court judgments are carried out by trained bailiffs and police officers stationed by the court. Thus, instances where the procedure laid down by the Sheriffs and Civil Process Act are fully complied with. The procedure laid down by the Sheriffs and Civil Process Act, are not fully followed. Most court judgment and order are either unsuccessfully or partly enforced. The provision of lesser punishment by the Judgment (Enforcement) Rules, that any bailiff who fails to comply with the provisions of the Rules, shall be liable to a fine of 100 naira or imprisonment for three month or both do not make any impact on any bailiff or registrar that obstruct the process of enforcement[[19]](#footnote-19).

A judgment of court is a determination of rights of which the court has cognizance and which gives some particular relief capable of being enforced[[20]](#footnote-20). It creates and vests rights and obligation in the parties making it obligatory for them to obey it. These parties are judgment creditors and judgment debtors. The judgments of the court should be complied with, without demand and in such a case it became operative from the moment it is delivered unless the court otherwise orders. Process shall be issued by application of the judgment creditor from the court before which proceeding is sought to be enforced. The judgment shall be executed by or through court for division or district where party or property is situated by paying all the necessary fees for the issuance of writ. Such execution should be carried out by the sheriffs and bailiffs of such court. Therefore, any judgment given by the court may direct.

A judgment may be given in one state but executed in another because it is the place where the judgment debtor resides or carries on business or has property. This means the writ is issued from the court which gives judgment (the home court)[[21]](#footnote-21) whilst it may be executed in another court (the foreign court).

**PROCEDURE (INTRASTATE)**

Where the matter is for the execution of a judgment in another magisterial district, the procedure is that the Registrar of the home court issues the process and sends to the Registrar of the same (foreign) court for the district the execution is to be levied, requesting the latter to cause the process to be executed with his division.[[22]](#footnote-22) The process is transmitted with a warrant in Form 11[[23]](#footnote-23) endorsed on it or annexed to it. The warrant authorises the Registrar of the foreign court to act in all respects, as though the process had been issued from his court originally. After the execution the Registrar of the foreign court makes a report of the execution of the process and remits all the proceeds received. Form 12[[24]](#footnote-24) is used for the returns to the home court. This process does not require leave of court.

**PROCEDURE (INTERSTATE**)

The jurisdiction of every court is confined to the boundaries of the state it is in and so, a judgment delivered in one state to be executed in another would require a federal (uniform) legislation to govern it. The Sheriff and Civil Process Act fulfils this requirement and for this category of processes, Sections 104 to 110 provide guidance.

The first step is for the judgment creditor to apply to the Registrar of the home court for a certificate of the judgment sought to be enforced in the form and containing the particulars set forth in the Second Schedule or as near thereto as the circumstances will permit, which certificate the Registrar is required to grant under his hand and the seal of such court.[[25]](#footnote-25) The certificate is issued under the hand of the Registrar and seal of the court. It is then delivered to the judgment creditor or his lawyer.

The process is then taken to the Registrar of a magistrate of like jurisdiction in the state which he intends to execute the judgment The Registrar of the foreign court then enters the particulars of the judgment in the register called, “The Nigerian Register of Judgments”. From the date of registration the certificate shall be a record of the court in which it is registered, and shall have the same force and effect in all respects as a judgment of that court, and the like proceedings may be taken upon the certificate as if the judgment had been a judgment of that court.[[26]](#footnote-26) The court can then deal with the judgment as though it were a judgment of its own.[[27]](#footnote-27) Therefore, the foreign court can hear an application for stay of execution by the judgment debtor or such other applications that the judgment debtor could have made to the home court.[[28]](#footnote-28) The judgment creditor shall depose to an affidavit stating:

1. The amount of the judgment debt that is due but unpaid;
2. The act ordered to be done which remains undone; or
3. The person ordered to refrain from doing an act has disobeyed the court’s order.[[29]](#footnote-29)

The judgment creditor then applies for the appropriate execution process which is then executed. After execution, the Registrar of the foreign court will make a report of the execution, stating in it whether the judgment has been satisfied in whole or in part. The report is to be filed under the seal of his court.

**TYPES OF JUDGMENT:**

The term “Judgment” or “Order” connotes any decision given by a court on a question or questions at issue between the parties to the proceedings properly before the court[[30]](#footnote-30). In the case of ***Saraki &Anor v. Kotoye*** [[31]](#footnote-31) , the supreme Court simply defined judgement as: “a binding, authentic, official, judicial determination of the court in respect of the claims and in an action before it”

Judgement can be classified into two:

1. **DOMESTIC JUDGMENT:** A domestic judgment can be defined as a judgment rendered by the courts of the state or country where the judgment or its effect is at issue. The following are types of domestic judgments:
   1. **INTERLOCUTORY JUDGMENT**

An interlocutory judgment can be seen as a non-final judgement made by the court between the time of filing and the time of final judgement. Interlocutory judgement merely addresses the issues present in the case. They are not in itself the final judgements. These are orders obtained in the course of pending proceedings that are granted to last either until the hearing of a motion on notice (in the case of orders obtained without notice; i.e., at an ex parte hearing) or until the conclusion of the suit. An order is granted upon an ex parte application where from the nature of the application the interest of the other party will not be affected or in matters of extreme urgency. The courts are empowered to make a number of interlocutory orders for the preservation of the subject matter of the suit or the maintenance of the status quo until the final determination of the case.[[32]](#footnote-32) The Court of Appeal in the case of ***Okhokue v. Obadan*** [[33]](#footnote-33) held that a Judgement should be regarded as final where the determination of the court disposes of the rights of the parties and not merely an issue in the case. Flowing from this, the real test for determining whether a Judgement is final or interlocutory is if the Judgement or order made finally disposes of the rights of the parties. If it dies, then it ought to be treated as the final Judgement. However, if it does not then it should be seen as an interlocutory judgement.

* 1. **FINAL JUDGMENT**

A final Judgment is a binding decision of the court delivered at the end of the trial or, in appropriate cases, upon consideration of the affidavit evidence presented to the court. In the final judgment, the court settles all issues in controversy between the parties and gives final orders in accordance with the reliefs sought by the parties. The reliefs could be injunctive, declaratory, an order for specific performance, etc. The last decision from a court that resolves all issues in dispute and settles the parties' rights with respect to those issues is a final Judgment.  A final judgment leaves nothing except decisions on how to enforce the judgment, whether to award cost and whether to file an appeal. A final Judgment can only be changed upon appeal. Each court of appeal has the power to change a Judgment which has been given by the lower court. The judgment can either be changed or retained.

* 1. **SUMMARY JUDGMENT**

This is a judgment delivered by the court without a trial. This happens when the matter is non-contentious or when the defendant has no defense to the claim. Summary judgment is a final judgment on the merits, and, unlike a default judgment, it cannot be set aside by the court that granted it.

* 1. **CONSENT JUDGEMENT**

This is a judgment made with the agreement (consent) of both parties. Here, both parties reach an out-of-court settlement of the dispute between them and present the settlement agreement (the terms of settlement) to be made as the final, valid and binding judgment of the court on the parties.

* 1. **DEFAULT JUDGEMENT**

This may be obtained by the claimant where the defendant fails to file a response (defense) to the originating process within the time prescribed in the applicable rules of court or where the defendant fails to appear on a date fixed for hearing. The defendant’s failure to file a defense to the claim is deemed to be an admission of the facts contained in the statement of claim and the claimant is entitled to judgment where the claim discloses a cause of action. Default judgment is only applicable where the claimant’s claim is for pecuniary damages or detention of goods with or without a claim for pecuniary damages. A default judgment is not a judgment on the merits and can be set aside by the court that grants it. The rules of court recognize different categories of default judgment, including judgment in default of appearance, judgment in default of defense, and judgment in default of appearance at case management conference.[[34]](#footnote-34)

1. **FOREIGN JUDGEMENT**

Only the judgement of a superior court of a foreign country may be enforced in a High Court in Nigeria. The procedure is that, a judgement creditor may apply to a Superior Court in Nigeria at any time within six years after the date of judgement or after the date of last judgement (where judgement was appealed) but an application may be made for registration within twelve months from the date of judgement or such longer period as may be allowed by the Court. It should be noted that the judgement will not be enforced unless: it is a final judgement delivered by a court of competent jurisdiction, the judgement is for a definite sum, the judgement debtor was properly notified of the commencement of the court of origin’s proceedings and the judgement is not obtained by fraud.[[35]](#footnote-35)

**Challenges of Foreign Judgement**

There are some challenges involved in the process of enforcement of foreign judgements.

Weems[[36]](#footnote-36) identified them as

1. The foreign country may require the Judgement to be converted into local currency which may or may not render the Judgement creditor whole as applicable in United States, Malaysia. United Arab Emirates
2. The foreign country may not allow the losing party to appeal the court’s decision against foreign money Judgement (applicable in Spain, Chile, and Venezuela
3. The foreign country may require a Government Official or Agency to approve or give an opinion on the legality of enforcement (applicable in South Africa, Venezuela, Israel, Mexico, Spain)

The foreign country may refuse to hear non-resident judgement debtor who has assets in the foreign country (applicable in Cyprus and Brazil).

**PARTIES TO EXECUTION OF JUDGMENT**

There are critical parties to an execution of Judgment and court orders. These parties include but not limited to; a sheriff and a bailiff. According to the Black’s law dictionary, A Bailiff: ***“is a court officer or attendant who has charge of a court session in the matter of keeping order, custody of the jury and custody of prisoners while in court. One to whom some authority, care, guardianship or jurisdiction is delivered, committed or entrusted. One who is deputed or appointed to take charge of another’s affairs, an overseer or superintendent; a keeper, protector or guardian or steward”***

While a Sheriff is defined as “***The chief executive and administrative officer of a county being chosen by popular election. His principal duties are in aid of the criminal and civil courts of record such as serving process, summoning juries, executing judgments, holding judicial sales and the likes. He is also the chief conservator of sales and the likes”***

Sections 3,4 and 5 of the **Sheriffs and Civil Processes Act (SCPA)[[37]](#footnote-37)** provide for the appointment of sheriffs, deputy sheriffs and bailiffs for each state of the federation and the Federal Capital Territory. Conventionally, the office and functions of the sheriff are carried out by the chief registrar of each state high court while a deputy chief registrar or chief magistrate is appointed to perform the functions of a deputy sheriff. A bailiff is usually appointed by the sheriff to aid in the execution of judgments and orders. The duties of these officers are stated in sections 7-13 of the SCPA. Section 15 the said act provides that it shall be the duty of every police officer to assist in the execution of the process of the court.

There are usually two parties to enforcement of a judgment, the judgment creditor and the judgment debtor. A judgment creditor is the party in whose favor the judgment or order was made and subsist, while a judgment debtor is the party against whom the judgment or order was made[[38]](#footnote-38) the use of the words „‟creditor and debtor‟‟ does not imply that the judgment must be for payment of money.

The terms, therefore, are used for every type of judgment or order. Thus the parties to an order of mandamus can be described as judgment creditors and judgment debtors, the former being the person entitled to enforce the order or to see that it is enforced and carried out and the latter, the one liable

under the order to carry out the contents of same[[39]](#footnote-39).

A judgment debt itself is a debt or damages or other monetary award which has been pronounced upon by the court of competent jurisdiction. It begins when the court has pronounced its judgment in favor of the plaintiff[[40]](#footnote-40). Such debt or damages or award does not become a judgment until the court or Judge adjudges the defendant liability to pay it[[41]](#footnote-41).There are two exceptional cases in which judgment creditor or debtor is not a party to a suit. Where for example, there is devolution of the rights and liabilities under a judgment as a result of death or otherwise, the successor in title and either of the two parties may enforce or be liable under the judgment. Thus on the death of a judgment debtor before execution application for execution of judgment may be made against his legal representative or estate and if the court grants the application, the judgment may be executed accordingly. Notice of this application must be served on the personal representative[[42]](#footnote-42). For the purpose of this sort of execution, the property of the deceased judgment debtor may be attached and sold if the judgment is for money to be paid out of the property. If no property of the deceased can be found and the legal representative fails to satisfy the court that he has fully applied, such property of the

deceased, as shall be proved to have come into his possession, the judgment may be executed against the legal representative to the extent of the property not duly applied by him in the same manner as if the judgment has been against him personally[[43]](#footnote-43).

Where the judgment creditor died, his legal representatives may also apply to the court for leave to enforce the judgment. Such application may be made exparte[[44]](#footnote-44).An assignee of the judgment can only levy execution if the whole judgment is assigned[[45]](#footnote-45),but not where the assignment is of part only of the judgment[[46]](#footnote-46).Writ of execution may be issue on behalf of any party to the suit, by leave of the court, upon proof of his title to the benefit of the judgment, and upon substitution of the name of the new judgment creditor.

Where a judgment is against a firm, execution may be issue as follows: against its property, against any person who has admitted in the proceedings that he was a partner when the cause of action arose or who has been adjudged to be liable as a partner, and, against any person who was individually served with summons as a partner or a person sought to be made liable. If there was a trial and the person so served failed to appear at the trial, or if the proceeding was an action on the undefended list or default action, and judgment were entered in default of defense if the judgment creditor claims to be entitled to issue execution against any other person as a partner, he may apply to the court by motion on notice served on the alleged partner personally and on the hearing of the application the court may give leave to issue writ of execution if liability is not disputed, but if it is disputed it may order the issue of liability to be timed in such manner as the court thinks fit, and may give all necessary directions for that purpose.

The sheriff’s duties and liabilities are three-fold;

1. To the judgment creditor, to obey the writ and any lawful instructions that have been given to him;
2. To the judgment debtor, not to do any act not authorized so to do;
3. To the court, to make a return to the writ, if required so to do.

The law does not require the sheriff to hand over goods seized under a writ of fieri facias to the judgment creditor in satisfaction of the debt owed. However, the judgment debtor or judgment creditor may be a purchaser of the goods at the sale. Re: Rogers,Ex parte Villars[[47]](#footnote-47).

**MODE OF ENFORCEMENT OF JUDGMENT AND COURT ORDERS:**

Enforcement of judgement can be seen as the last stage of a judicial process after the legal right or claim has been converted into judgement which is yet to be enforced. The enforcement of judgement is an important step in any matter brought before a court for resolution. The reason for the importance of judgement enforcement is that when a judgement is given and it is not enforced, it becomes useless to the party. See Saraki & Anr. v. Kotoye (Supra).

A judgement may require the payment of money from one person to another or it may require person to do or abstain from doing a particular act. The court do not normally take steps towards the enforcement of judgement in certain civil matters. It is left for the successful party to take certain steps to invoke the machinery of the court in various ways to enforce the judgement or order and so secure the benefits of the success of his litigation. The overriding of the judicial process of enforcement is to provide for creditors the fruit of the judgement, to obtain for him due satisfaction, compensation, restitution, performance or relief

The process of enforcement is broadly referred to as execution. Lord Denning in the case of ***The Overseas Aviation Engineering (GB) Ltd*** [[48]](#footnote-48) summarized the process as he stated that;

***“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, such a fieri facias ……. It was legal execution; when it was had by means of equitable remedy, such as the appointment of receiver, then it was equitable execution because it was the process for enforcing or giving effect to the judgement of the court.”***

As stated previously the burden for the activation of the process for enforcement of judgement rests on the successful party. Conversely the court has no power and machinery to act of its own motion to enforce, still left to police, its own judgement. In enforcement of judgement, there is no general enforcement machinery. This means that for each process the judgement creditor picks, he will have to begin a fresh and separate proceeding to give effect to the judgement or order by the court. It is important to note that the mode of enforcement which the judgement creditor picks should be tailored towards the kind of remedy which was given. The power of the court to enforce and ensure compliance with it’s judgement or order is laid down in Section 6(6)(a) of the 1999 constitution which provides that the judicial powers of the court “shall extend notwithstanding anything to the contrary in this constitution to all inherent powers and sanctions of a court of law “. Section 6(6)(b) goes further to provide that the powers” shall extend to all matters between persons or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil Rights and obligations of that person”

Enforcement of judgement can be done according to the subject matter such as;

1. **MONEY MATTERS**

In this instance, the judgement debtor is required to pay the judgement creditor a certain amount of money.

**Mode of Enforcement**

1. ***Writ of fieri facias****:* This writ is popularly known as writ of fifa. By this writ the judgement debt is recovered by the seizure and sale to the judgement debtor’s property. The proceeds of the debt are then used to pay up the debt owed to the judgement creditor. It is important to note that the writ of fifa can only be issued upon the expiration of three days from the date of delivery of judgement. The first call is on the movable properties of the judgement debtor. According to section 25 of the Sheriff and Civil Processes Act [[49]](#footnote-49) it limits the amount of the property that can be seized and exempts wearing apparels, bedding and work tools. It is important to note that those properties cannot be sold until after the expiration of five clear days from the date of seizure, unless the judgement debtor request in writing that they be sold before the expiration of five days.
2. ***Garnishee Proceedings***: This is governed by section 83-92 of the Sheriff and Civil Processes Act. This type of proceeding happens when the judgement debtor has money due to him from the third party, now called the garnishee. The court may call the third party upon the application of the judgement creditor now the garnishor, to pay the money which is due to the judgement debtor, to the court after which the money will be paid to the judgement creditor in settlement of the debt. The judgment creditor applies, by a motion ex parte, for an order nisi, which is a conditional order, to compel the garnishee to appear before the court and show reasonable cause why he should not be made to pay the debt to the creditor. Where the garnishee fails to show reasonable cause or honor the invitation of the court, the order nisi may be made absolute and the money judgment will be enforceable against him, as if he were the judgment debtor and the appropriate writ of execution may be issued against him.[[50]](#footnote-50)
3. ***Judgement Summons***: This is provided for in Section 55 of the SCPA. This is another mode of enforcement of money judgement. It usually involves a judgement debtor who has the ability and resource to pay but refuses to do so. He may be committed to prison for his default. The judgement debtor is usually brought into court and examined orally as to his source of income. If at the end of the examination, the court comes to the conclusion that the Judgement debtor has the means to pay off his debt it may make any of the orders provided in that regard including an order to committal to prison. The court may also give an order for payment in installments.
4. **Sequestration***:* The governing law for this is **Section 82** of the **SCPA**. An application for sequestration may only be made to the High Court. It is similar to a writ of Fi Fa but, in this case, the intent is not to sell the property or transfer title but to appoint "commissioners" to enter the judgment debtor's immovable property for the purpose of collecting and keeping the rent or profits accruing on the property, or to seize the property and detain until the judgment debtor clears himself of contempt or until the court makes a contrary order, which could be that the debt be settled out of the funds obtained. This is on the authority of **Order 11 Rule 9** of the **Judgment Enforcement Rules**.
5. **JUDGEMENT FOR POSSESSION**

This is where the judgement creditor has obtained judgement for the possession of the property which was in dispute. The modes of enforcing this judgement includes, writ of possession, warrant of possession and committal order.

1. **JUDGEMENT FOR DELIVERY OF GOODS**

This is for cases where the judgment was for the delivery of goods from the judgment creditor to the judgment debtor. The modes for enforcing this judgement includes committal order, writ of Sequestration and writ of specific delivery.

**Enforceable Judgement**

Every Judgment of the court must be obeyed and is effective from the date of its delivery or from such a date as the judgment itself appoints. The judgement 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 judgement creditor is entitled to commence enforcement proceedings.

Generally enforceable Judgments include that:

1. Which the time for its enforcement has arrived,
2. Which requires the payment of money, or which directs its recovery
3. Which requires the transfer, delivery or recovery of possession of property, real or personal or which requires a person to do or abstain from an act,
4. Which has not been satisfied
5. Which is not stayed or on which execution is not stayed,
6. Which has not become statute barred.

The Court will also enforce:

1. Order of Industrial Tribunals
2. An award on Arbitration governed by the Arbitration Act
3. A maintenance orders.[[51]](#footnote-51)

The foregoing can also be classified as executory judgment. In ***Okoya v Santili***,[[52]](#footnote-52) the Supreme Court defined executory Judgments which declare the respective rights of the parties and then proceeds to order the defendants to act in a particular way; for example, to pay damages or refrain from interfering with the plaintiffs’ rights. The Supreme Court went further to say that such judgements are enforceable by execution if disobeyed.

**Unenforceable Judgments:**

Some judgements are incapable of being executed as the judgment or the order itself is all that the party obtaining It requires. One of the types of Judgments which cannot be executed is a declaratory judgment, the reason being that a declaratory order merely declares the rights of the parties and is dormant hence it has no force of execution in the judgment or order.

However, a declaratory judgment may be enforced by an action. Thus, the party who obtains a declaratory judgment or order may go back to the court and seek an order to enforce it.[[53]](#footnote-53)

An interlocutory judgement also cannot be enforced. The Supreme court held in Government of Gongola State v Turkur that ***“One of the types of judgments which cannot be executed is an interlocutory judgment because it does not at once affect the status of the parties, neither does it finally dispose of their rights since it leaves undecided the various points at the issue and no execution can proceed without reference to court”.***

**PROCEDURE FOR THE APPLICATION OF PROCESS**

a) Time within which execution may be levied:

A decree or an order of the court may command immediate authority and must be obeyed without demand immediately after the order has been made. However, if there is no immediate compliance, execution can only commence after expiration of a specified period of time from the date of judgment. Under the rules, no process other than that right of possession shall, except by express leave of court, be issued until after the expiration of three days from the day on which judgment is given[[54]](#footnote-54). For a writ of possession the stipulated time of issue is after the expiration of the day on which defendant is ordered to give possession or if no day is fixed by the court for giving possession, then after the expiration of fourteen days from the day on which judgment is given[[55]](#footnote-55). As between the original parties, process, otherwise than against the person may be issue at any time within six years and against the person at any time within two years, from the date of judgment which is immediately sought to be enforced[[56]](#footnote-56). But where then execution of the judgment is by way of proceedings against the person of the judgment debtor e.g., his committal to prison, the necessary process or writ must be issued within two years from the date of the judgment and when the execution is by way of proceeding against his property, e.g. attachment and sale, the corresponding period is six years.

With leave of court, execution can still be levied after the expiration of the prescribed period in each case. The application for leave is made exparte[[57]](#footnote-57).Where leave is given a note thereof is made on the process. Failure to endorse the process to show that leave has been given amounts to an irregularity. The effect of which is not only that a process was not taken out as required by law but also that no process was taken out at all[[58]](#footnote-58). The judgment creditor, is however, at liberty to cause a fresh process to be issued[[59]](#footnote-59).

A writ of execution remains valid for one year from the date it was issued. After one, year the writ expire, and once execution is carried out with the expired writ , the execution becomes void[[60]](#footnote-60).But the court may, on the application of the judgment creditor, extend it beyond the period. A new writ may however be issued instead of applying for the extension. But the disadvantage in so doing is that, the new writ takes priority from it date[[61]](#footnote-61). Whereas, by renewing a writ, its priority is preserved. Execution is effected between 6:00am and 6:00pm of any day other than a Sunday or public holiday, unless the judgment or magistrate directs otherwise by order endorsed on the process to be executed[[62]](#footnote-62).But where the execution is for attachment of the judgment debtors property, execution can be carried out as early as 5:00am and can be extended to 11:00pm as the case may be, depending on the nature of the of the person against whom execution is to be levied, e.g. Government or security officers.

**The Court From Which Process Is Issue:** The rules says, save in the exceptional cases to be mentioned “process shall be issued from the court before which the proceeding is pending or which gave the judgment sought to be enforced , as the case may be, and from no other court”[[63]](#footnote-63). As a general rule a judgment may be enforced in the court which gave the judgment and in no order court[[64]](#footnote-64). The judgment given on appeal by an appellate court becomes the judgment of the court from which the appeal came[[65]](#footnote-65). If therefore, in an appeal against the judgment of a court, the Appeal Courts makes and order, that order becomes an order of the court and should be enforced therein and not in the appeal court[[66]](#footnote-66). The rules of an appellate court may expressly empower the lower court to enforce the judgments or orders of the appellate court[[67]](#footnote-67).The Supreme Court, in ***J.O. Anakwenze v.Louis Aneke& others****[[68]](#footnote-68)*, held that, the court of appeal being a superior court of record, had an inherent power to enforce a judgment given by it on appeal. Apart from this power, the court of Appeal Rules, 1981[[69]](#footnote-69) and the Supreme Court Rules, 1985[[70]](#footnote-70) empower the Court of the Appeal and Supreme Court, respectively, to enforce their judgments or to rent same to the court below for enforcement.

Therefore, under the High Court of Federal Capital Territory Abuja, after the pronouncement of the judgment of the court, the lower court from which the appeal came shall have the same jurisdiction and power to enforce and shall enforce, any decision which may have been affirmed, modified, amended or substituted by the court or any judgment which may have been pronounced by the court, in the same manner in all respects as if such decision or

judgment had been pronounced by itself[[71]](#footnote-71).Any order given or made by the court may be enforced by the court or by the lower courts as may be most expedient[[72]](#footnote-72).

The exceptional cases referred to in ***Rule 24 of Order 2*** in which execution may issue in a court other than the one that give the judgment are: where a judgment has been obtained in a Magistrate Court, execution against the immovable property of the judgment debtor issues only from the High Court and not the magistrates‟ court[[73]](#footnote-73).A judgment summons against a judgment debtor is issued by the court in the district or division in which the judgment debtor resides or carries on business, or in the case of two or more judgment debtors, in which one of them resides or carries on business, which court may not necessarily be the one that gave the judgment[[74]](#footnote-74). A writ of sequestration, or a writ of interim attachment directed against any immovable property of a defendant or judgment debtor in execution of a judgment of a magistrates court can only issue out of the High Court upon the transfer thereto of the proceedings[[75]](#footnote-75).Garnishee proceedings may be instituted in court other than the ones that gave the judgment[[76]](#footnote-76) and a judgment given in one state‟s court may be enforced in a court of another state under the provisions of the sheriff and civil process Act.

**c) The place where execution to be levied:**

The general rule is that process shall be executed by or through the court for the division or district where the judgment debtor or the property to be affected is or situated and by no

other court[[77]](#footnote-77). If the execution is against the person of the judgment debtor, then the venue for execution is the division of district the person is situated and, as against his property in that in which it is situated. There are, however some exceptions to these rules which will be considered in due course example, Garnishee proceedings and execution in a state of a judgment given by a court in another state which will be discuss later. A judgment creditor who wants to enforce a judgment may make an application for the appropriate process to the registrar of the court. If the required process is one which may issue without an order of the Court or a judge or magistrate, he shall apply to the registrar in the first instanced for it. But if it is one for which such order is necessary, the application to the registrar is made after the order for its issue has been obtained[[78]](#footnote-78).

For application for issue of some processes, example, writ of execution, a praecipe or form is required or prescribed. In such a case, the judgment Creditors is only to obtain the praecipe from the Court, dully completed and then return it, as completed, to the registrar[[79]](#footnote-79).If a praecipe is not necessary the application to the registrar is made by the judgment creditor filing a written request for the issue of the process specifying the number and title of the suit, the date of judgment, the nature of the process, and the name of the party against whom and the amount, if any, for which it is to be executed[[80]](#footnote-80).

Upon the application, the registrar, subject to the provisions of the rules, issues the process, he also records in a book kept by him the precise time of the making of the application to him as well as on the writ. If there is no any motion or appeal in respect of such matter as the

judge will request before signing the writ or warrant. The registrar will then forward the process to the Enforcement and Execution Department, from which the head of the Department would minute and forward the file to the Chief Registrar (the Deputy Sherriff) for approval. But the registrar may, at any time, take direction of the Court as to any application, and in the meantime, refuse to issue the process.

**d) Cost and expenses of execution:**

Second schedule to the rules contain fees to be paid for the issue of writs (depending on the nature and amount of the judgment sum) and sheriffs expenses for carrying out such functions related to the execution. These fees are paid in the first instance by the judgment creditor. He also pays for the expenses of the conveyance to and subsistence of the judgment debtor in prison in case of the latter‟s committal therein for default in carrying court‟s order. The judgment creditor is legally responsible for paying the expenses and providing all necessary fees, and the execution shall not be proceeded with until he has done so[[81]](#footnote-81). Where the execution is withdrawn, satisfied or stopped, any fees that might have been properly incurred by the bailiff during execution shall also be paid by the judgment creditor.64

Except as otherwise prescribed by the sheriff and civil process act or the Judgments Enforcement Rules, the costs, the fees and expenses of and incidental to the issue and the execution of any process paid by the judgment creditor are allowed against the judgment debtor, unless the judge or magistrate otherwise directs.65 The judgment creditor may levy these cost of execution, in addition to the judgment debt, unless the court otherwise orders in 22

cases where the costs had been needlessly incurred[[82]](#footnote-82). The judgment creditor may levy any interest on the judgment which the court may have ordered. Therefore the sheriff, deputy sheriff and bailiff are public officers and paid for their services by the state. Where the judgment debtor pay the judgment sum but refuse to pay for the expenses and cost for the execution, in the High Court of the Federal Capital Territory, Abuja, the officers in charge of the execution are to attach the judgment debtors properties worth the amount of the execution fees, which after five days on the application of the judgment creditor for valuation and sale, will be valued and sell to recover such amount of fees incurred. Where judgment is to the effect that a party is entitled to any relief subject to or upon the fulfillment of a condition or contingency, the party so entitled can only enforce that judgment if the condition has been fulfilled or the contingency has arisen. Application for leave of court made before the proceeding to execution and the court may, then if satisfied that the right to relief has arisen according to the terms of the judgment, order that, writ of execution be issued accordingly, or direct that any issue or question necessary for determination of the right of the parties be tried as in a suit[[83]](#footnote-83).

The party may be deemed to have waived the relief if he fails to fulfill the condition. So where an order was made in favor of the defendants for relief from forfeiture, subject to their performance certain conditions some of which they declined to carry out, it was held that the order could not stand in the circumstance and that the position was as if their application for the relief of forfeiture was refused by the Court[[84]](#footnote-84).The party entitled to a conditional judgment cannot be compelled to perform the condition, his only penalty being the loss of the benefit

of the Judgment[[85]](#footnote-85).If there are cross judgment between the same parties for the payment of money, execution is taken by that party only who obtained judgment for a larger sum. Satisfaction for the smaller sum is then entered on the judgment for the larger sum as well as satisfaction on the smaller sum. If both sums are equal, satisfaction is entered upon both judgments[[86]](#footnote-86). In that case there is no need for execution; Judgment in an action and in counter-claim are cross judgment.

**CONCURRENT WRIT OF EXECUTION**

Each of the various writs of execution is meant to enforce a specific type of judgment or order. Where a judgment Creditor is granted reliefs which are enforceable by different writs, he may apply for the issue of such writs concurrently. Therefore if the judgment is that a chattel be delivered to him in addition to damages for their detention, he may have the two writs of delivery and *fifa* respectively issued simultaneously. In the case of a judgment for payment of money, a judgment creditor may issue two or more writs of *fifa* for execution in different districts or division within the jurisdiction, particularly where the debtors good is in each of them are not substantially enough to satisfy the judgment. He may also issue the writ in succession without waiting for a return to the first. Although each of the concurrent writs is for the levy of the amount of the judgment debt, the judgment creditor should not levy more than that amount in the process of executing all of them.

A judgment creditor cannot issue a series of writ of execution, each covering a portion only of one single judgment. This situation is most likely to arise in a judgment for payment of money. He cannot split the amount involved into smaller parts and then issue a writ of *fifa* for

each. This is because of the general rule of practice to the effect that upon judgment, a judgment creditor can issue only one execution[[87]](#footnote-87), as in the maxim ***“one judgment, one execution”.*** Process may be issued concurrently for execution in one or more division or district, but the costs of more than one process and execution shall not be allowed against judgment debtor except by order of the court[[88]](#footnote-88).Where a judgment summons is pending or an order or warrant of commitment is outstanding in respect of money payable under a judgment, no other writ of execution can be issue in respect of the money so payable except by leave of court[[89]](#footnote-89). So that no other writ of execution should be issued concurrently with a pending judgment summons.

**EXECUTION BY LEAVE OF COURT**

Normally the judgment creditor proceeds to enforce the judgment as of right as soon as the necessary procedural requirements have been fulfilled. No recourse to the court is necessary. Where leave is necessary the judgment creditor applies to the Court for it by motion supported by affidavit. The motion may be required to be on notice or *exparte* accordingly as the Rules provided. It is within the discretion of the Court to grant leave to execute[[90]](#footnote-90) Dismissal of an application for leave is not a bar to a second one where such a later application is founded on new facts and it can only be granted on facts not before the Court on the first application[[91]](#footnote-91).Where leave is required, any execution proceedings initiated without

such leave are incompetent and should be dismissed[[92]](#footnote-92).Cases where leave is required before execution are provided under different orders and rules, these are:

i. Execution on Sunday and Public Holidays[[93]](#footnote-93): As a rule execution is not permitted on these days. But a judge or magistrate may otherwise direct by order endorsed on the process to be executed, which arise in the case of urgency. The judgment creditor may then apply to a judge or magistrate, not necessarily in open court for required endorsement.

ii. Where judgment is conditional[[94]](#footnote-94);

iii. Judgment against personal representative of deceased person[[95]](#footnote-95);Judgment may be executed against personal representative of a deceased judgment debtor if no property of the latter can be found and the personal representative fails to satisfy the court that he has duly applied such property of the deceased as shall be proved to have come into his possession to the extent of the property not duly applied by him.

iv. Execution of a judgment against a partnership, against a person claimed by the judgment creditor to be a partner of the firm[[96]](#footnote-96).Here the Judgment Creditor claims that, that person is a partner. He will then apply by motion on notice for leave of Court to execute the judgment against the partner of the firm. On hearing of the application, the Court may grant leave to execute, if liability is not disputed by the partner of the firm. Otherwise it may order the issue of liability to be tried.

v. Execution before the expiration of three days from date of judgment[[97]](#footnote-97)

vi. Execution by persons not party to the suit[[98]](#footnote-98).

vii. Execution against the person or property of judgment debtor after two years or six years from date of judgment[[99]](#footnote-99),which made by motion *exparte*.

viii. Execution where change has taken place by death, or otherwise, in the parties entitled or liable to execution[[100]](#footnote-100).This can also be by bankruptcy of the parties. Therefore on the death of the judgment creditor, application is made *exparte[[101]](#footnote-101)*,while if it is the judgment debtor, who has died to enforce the judgment, the judgment creditor will apply for leave by motion on notice to the personal representative of the deceased[[102]](#footnote-102).

In case of bankruptcy of a party, his trustees in bankruptcy step into his shoes. The judgment creditor‟s trustee in bankruptcy may, by leave of court enforce a judgment in favor of the bankrupt and without the need of his being added as a party. Devolution of rights can arise by assignment of judgment debt. Any assignee of the judgment debt may, by leave of court, enforce it. But he cannot do this if part only of the debt is assigned as execution can only be levied against the whole judgment[[103]](#footnote-103). The assignor does not have to be added as a party.

ix. Where a husband is entitle or liable to execution upon a judgment for or against his wife[[104]](#footnote-104).

x. Execution upon judgment of assets in Futuro[[105]](#footnote-105).

xi. Where a party is entitled to execution against any of the Shareholders of a joint stock company upon a judgment recorded against such company or against a public officer representing such company[[106]](#footnote-106).

xii. Execution against immovable property[[107]](#footnote-107).

xiii. Execution upon materials used in construction of a building[[108]](#footnote-108).

xiv. Where there is a pending judgment summons[[109]](#footnote-109).

xv. Execution by warrant of committal[[110]](#footnote-110).

xvi. Execution on property *custodia legis*.[[111]](#footnote-111)

xvii. Execution for entire balance of judgment where there is already an order for instalmental payments. This replaces the original judgment that decreed for payment of the whole amount due, there is no longer a present debt of the amount of judgment debt but a debt accruing due by so much a month the judgment creditor can only levy execution for

the amount of instalmental which has become due if he seeks to levy execution on the entire balance he must make an application to that end in Court.

xviii. Execution by writ of delivery where judgment is for goods or payment of its value, where judgment is given for the plaintiff for the return of the property claimed or payment of its value, the defendant has an option to return the goods or pay the value. But “the court may upon application by the plaintiff order that execution shall issue for the delivery of the property without given the defendant the option of retaining it upon paying the value assessed, (if any)”[[112]](#footnote-112).Leave is therefore necessary where delivery is only required by the judgment creditor. The application could be made *exparte*.

**THE OBSTACLES OF ENFORCEMENT OF COURT JUDGMENT**

Often time there is a clog in the wheel of justice administration through the process of enforcement of judgment by factors which are 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/her judgment. The following are some of the common factors inhibiting the quick or immediate realization of the fruits of judgments.

**1.Stay of Execution**

The Black’s Law Dictionary[[113]](#footnote-113)defines a stay of execution as “***the suspension or postponement or halting of judgment or the like***". Where a judgment debtor is not satisfied with the judgment of the trial court, the latter may apply for an order of stay of execution against the judgment. The Supreme court in ***Vaswani Trading Co v. Savalak***[[114]](#footnote-114) provides the basis for granting a stay of execution.

Coker JSC held:

“***Stay of execution will be granted where failure of it will destroy the subject matter of the proceedings or foist upon the court, especially court of Appeal a situation of complete helplessness or render nugatory any order of the Court of Appeal or paralysed the exercise by the litigant of his constitutional right of appeal or provide a situation whereby, even if the appellant succeeds on appeal, there will be no return to the status quo".***

Simply, the whole idea of stay of execution is to preserve the res i.e. the subject matter of the litigation pending on appeal. The party applying for a stay of execution has the onus of showing special or exceptional circumstances entitling him to the equitable interest. The implication of a stay of execution is that once the order is given, the parties are required to maintain the status quo and not to allow either party to take advantage of the litigation [[115]](#footnote-115). An order of stay of execution is the discretionary power of the courts which must be exercised judicially and judiciously. The Supreme court stated in ***Okafor v. Nnaife***[[116]](#footnote-116), that a discretion that is biased in favour of an applicant for a stay but does not adequately take into consideration the respondent’s equal right to justice is a discretion that has not been judiciously exercised. In practice, stay of execution have been abused, misused and is applied to deprive judgement Creditors of the fruits of their success.[[117]](#footnote-117)

**2. Interpleader Summons**

Interpleader is a proceeding by which a person, from whom two or more persons claim the same property or debt and who not himself claim the property or debt, can protect himself from legal proceedings by calling upon the Claimants to interplead, that is, claim against each other so that the title in the property or debt may be determined. See ***Nwekeson v. Onuigbo[[118]](#footnote-118).***

There are two types of interpleader. They are:

1. Sheriff's Interpleader
2. Stakeholder interpleader

**Sheriff’s Interpleader:** This is where a Sheriff seizes or intends to seize goods by way of execution and a person (other than the judgment debtor) claims them. In such a case, the sheriff initiates the proceedings to determine whether the property belongs to the judgment debtor or to the claimant.

**Stakeholder Interpleader:** Stakeholder interpleader was summarily explained in ***Sofola v C.L.C. Nig. Ltd.,*** In Re: V.T Learning Ltd.[[119]](#footnote-119)

***“....is a situation where an action is brought or threatened against a legal personality the like of a banker or a person the like of a Stakeholder who is in possession of money or goods in which he has no interest but which are the subject of rival claims. It will be unjust to put such a person in possession of money or goods in which he has no interest into an unnecessary expense of defending such an action. Under the English Rules, Order 17 of the Supreme Court Practice, 1999, he may bring such rival claimants before the Master ( a judge in Nigeria context) to determine the rightful owner between the rival claimants and to shield himself from a possible court action any of the rivals may want to foist on him. That type of interpleader summons is known as “stakeholder’s interpleader”.***

By the provision of Order VI Rule 1 of the Judgments (Enforcement)Rules, any claim or in respect of attached property shall be made to the Bailiff holding the writ or to the Sheriff. Section 34(1)of the Sheriffs and Civil Process Act also provides that if a claim is made to or in respect of any property attached in execution under process of a court, or in respect of the proceeds or value thereof, the registrar may, upon the application of the Sheriff, as well before as after the court the party at whose instance the processes issued and the party making the claims. From the above provisions where a claim is made to any money, goods or chattels taken or intended to be taken by a Sheriff in execution under any process or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued, the Sheriff may apply to the court for relief by way of interpleader.

3. **The issue of Costs, Expenses and Corruption of Court officials:**

Generally, the judgment creditor is to fund the successful execution of the judgment order. The judgment Creditor is to pay prescribed fees to the Registrar of court; these are minor expenditures for the payment of wage to non-judicial administrators such as professional auctioneers for the execution or to provide logistic support to the Sheriffs and the Police for a successful execution. It is pertinent to know that the Sheriffs and Police are not entitled to any such additional stipends to carry out such execution, as they are paid workers of the Judiciary and Nigerian Police Force respectively. In practice, the Sheriffs and Police officers take advantage of the judgment Creditors and charge exorbitant fees to carry out their lawful duties. Ordinarily, the Sheriff has the duty to organise the Police, hire and fuel the vehicle for the execution of a judgment. However, these officers see this as an opportunity to enrichment, which is a breeding ground for corruption. It is seen that after the judgment Creditor has made payment to all the officers, the balance of the judgment sum may not be enough to satisfy the judgment debt.

4. **Limitation period for enforcement of judgment**:

***Order IV Rule 8(1) & (2) of the Judgment Enforcement Rules*** provides:

“As between the original parties, process, otherwise than against the person, may issue at anytime within six years and against the person at anytime within two years, from the date of the judgment which is immediately sought to the enforced. After such periods respectively process shall not issue without leave of the court, but no notice to the judgment debtor before applying for such leave shall be necessary”.

In Nigeria, a foreign judgment may be registered within twelve months from the date of the judgment or any longer period allowed by the registering High court in Nigeria[[120]](#footnote-120). If a judgment Creditor, without leave of court, execute a judgment outside the stipulated statutory period, the judgment debtor may apply to the court to set aside the execution of the judgment. The applicability of limitation laws to the enforcement of judgment in Nigeria is another injustice and burden to the judgment creditors.

5**. Death of parties to the Action**:

Where the parties to the suit( judgment creditor and judgment debtor) dies before the execution of judgment, the successor-in-title or legal representative of the parties may commence fresh proceeding before a competent court to enforce the court order or judgement.[[121]](#footnote-121)In commencing a fresh proceeding, there will waste of time and also litigation cost. ***Order 15 Rule 3 Court of Appeal Rules 2021*** provides that delay in proceedings and delivery of judgment that a necessary party to the Appeal is dead, the appeal shall be struck off the hearing list.

6**.Enforcement of judgment against Government**:

It is a challenge to enforce judgment against the government because the consent of the Attorney General of Federation or state to be sought before the execution of the judgment. Section 84 of the Sheriff and Civil Process Act provides that monies in the hand of a public officer cannot be enforced or attached unless the consent of the Attorney General is sought or obtained. The court of Appeal in the case of ***Government of Akwa Ibom V. Powercom Nigeria limited***[[122]](#footnote-122), held that section 84(1) of the Sheriff and Civil Process Act was not inconsistent with the provisions of the 1999 Constitution. It is difficult to enforce judgment against government as no coercive sanction may be necessary for a government to obey its order[[123]](#footnote-123). Another issue is that the constitution [[124]](#footnote-124) provides that no money shall be withdrawn from the consolidated revenue fund of the state except to meet the expenditure authorized by the appropriation of law. The implication is that, if there is no provision for the payment of judgment debts in the appropriation of Law, the Government or it’s agencies may refuse to pay the judgment debt.

8. **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.

9. 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.

10**. Lack of conductive 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.

11. **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.

12. 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.

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 Courts, 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*[[125]](#footnote-125).**
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 staff 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.
11. The Sheriffs of the court should be train and well armed, just like other jurisdiction in other clan wherein the Sheriffs are trained paramilitary, the become like police of the court who carry out enforcement of court Judgments and Orders. This will enable the Judiciary not to rely on the Police for enforcement of court judgment.
12. Where the case involve the government as the judgement debtor, the Attorney General (of the federation and state) should be able to provide an enabling environment to ensure that government complies with court orders.[[126]](#footnote-126) Similarly, the provisions of the Appropriation Act and the Sheriffs and Civil Processes Act, should also be amended to reflect the current realities of our economy. It should also enable the judgement creditor enforce the judgement against the government, without so much hardship.
13. There should be disciplinary measures put in place for lawyers who file frivolous applications for stay of execution to frustrate judgment creditors. These disciplinary measures can include payment of heavy fines and other professional penalties.
14. In cases that involve death, parties should be encouraged to submit to Alternative Dispute Resolution Mechanisms, instead of embarking on fresh proceedings. This is advisable in order to avoid procedural delays and cost of execution.
15. The limitation law on judgement enforcement should be eradicated. Judgment creditors should be able to enforce judgment against his debtor whenever he is ready.[[127]](#footnote-127)

**CONCLUSION**

The need for a successful enforcement of judgment of courts cannot be overemphasized. Getting judgments or orders is only the first step, enforcing the judgment gotten is an entirely different thing all together. Enforcing judgments in Nigeria has proven to be a very difficult task owing to various factors. From talking about Judgment enforcement, it is clear that the process should not be cumbersome, and dicey.

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 prospect 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.

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2. *Tukur v. Government of Gongola state* (1989) 4NWLR 592 at 608 [↑](#footnote-ref-2)
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4. . *Re Overseas Aviation Engineering (GB) Ltd.* (1963) Ch. 24 at pp.39,40. Babalola A. (2003) *Enforcement of Judgments*. Obafemi Awolowo University Press Ltd. Ile-Ife, Nigeria, p.2 [↑](#footnote-ref-4)
5. *Ibrahim v. Emein* (1996)2N.W.L.R. (Pt.430) 322at 339 [↑](#footnote-ref-5)
6. . The Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 6 (6) (b). [↑](#footnote-ref-6)
7. Cap S6, Laws of the Federation 2004. [↑](#footnote-ref-7)
8. Cap 189 LFN 1958. [↑](#footnote-ref-8)
9. See Order 19 Rule 9(1) of the Magistrate’s Courts of Cross River (Civil Procedure) Rules 2012 and Order 19 Rule 9 of the Lagos State Magistrates Courts Civil Procedure Rules 2009. Cf Order 25 Rule 4 (1) of the District Court Rules 2021 for the FCT. [↑](#footnote-ref-9)
10. See also Section 92(1) of the Sheriff and Civil Processes Law of Cross River State. [↑](#footnote-ref-10)
11. Ed. By Bryan A. Garner 9th ed. (U.S.A Thomson Reuters 2009) 918 [↑](#footnote-ref-11)
12. See Section 1 (1) & (2) of the Sheriff and Civil Processes Law of Cross River State. [↑](#footnote-ref-12)
13. Cap S6 LFN 2004. [↑](#footnote-ref-13)
14. Cap 123 Laws of Northern Nigeria 1963 [↑](#footnote-ref-14)
15. 1999 [↑](#footnote-ref-15)
16. (1963) CH 24 at pp 39,40 [↑](#footnote-ref-16)
17. (1990) 3 NWLR (pt 131) 172 [↑](#footnote-ref-17)
18. Cap S.6 Laws of the Federation, 2004 [↑](#footnote-ref-18)
19. Judgment (Enforcement) Rules, 2004, Order 1, Rule 16 [↑](#footnote-ref-19)
20. Gov. of Gongola State v. Tukur (supra) p.1,at 602, Afolayan A.F. and Okorie P.C (2007), Mordern Civil Procedure Law; Dee-Sage Nigeria ltd, Lagos P.297. [↑](#footnote-ref-20)
21. Interpretation section of the Judgment (Enforcement) Rules. [↑](#footnote-ref-21)
22. See Sections 37 & 39 of the SCPA and Order 2 R26(2) & Rule 28 of the Judgment (Enforcement) Rules. [↑](#footnote-ref-22)
23. First Schedule of SCPA. [↑](#footnote-ref-23)
24. *Ibid*. [↑](#footnote-ref-24)
25. Section 104 SCPA [↑](#footnote-ref-25)
26. Section 105 SCPA [↑](#footnote-ref-26)
27. Section 108 SCPA [↑](#footnote-ref-27)
28. Section 109(1) & (2) SCPA. [↑](#footnote-ref-28)
29. Section 107. [↑](#footnote-ref-29)
30. Afe Babalola, OFR,SAN, Enforcement of Judgement, 1st edn 2003. [↑](#footnote-ref-30)
31. (1992)9 NWLR (Pt.264)156 [↑](#footnote-ref-31)
32. Olasupo Shasore SAN, Bello Salihu, Orji Uka and Teniola AkejuALP NG & Co,’ Enforcement of Judgements’ [↑](#footnote-ref-32)
33. (1989) 5 NWLR (Pt.120) 185 [↑](#footnote-ref-33)
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35. Section 6 of the Foreign Judgement (Reciprocal Enforcement) Act Cap F 35 LFN 2010. [↑](#footnote-ref-35)
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40. ibid [↑](#footnote-ref-40)
41. ibid [↑](#footnote-ref-41)
42. . *Re: Shepherd* (1890) 43 ch. D. 137, Nwadialo F. (2000) *Civil Procedure in Nigeria.* University of Lagos Press, Lagos, Nigeria, p.967.

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45. *Foster v. Baker* (1910) 2, K.B., 636 [↑](#footnote-ref-45)
46. *Aloa v. Latayo in Re Omo-Eboh* (1962) 2, All NLRR, 165 [↑](#footnote-ref-46)
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48. (1963) Ch 24 at Pp 39,40 [↑](#footnote-ref-48)
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73. Sheriffs and Civil Process Act, 2004, S.44, Section 21. [↑](#footnote-ref-73)
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79. Ibid Order 4 Rule4. [↑](#footnote-ref-79)
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