

## TABLE OF CONTENTS

1. INTRODUCTION	
2. Power for Enforcement .....	2
2.1. Constitutional power .....	3
2.2. Other statutory provisions .....	4
3.1. Definition of Judgment/Order .....	4
3.2. Unenforceable Orders .....	5
3.2.i. Declaratory orders	
3.2.ii. Interlocutory orders	
3.3. Enforceable Orders .....	7
4.1. Pre-Enforcement / Execution stage .....	8
4.2 Enforcement / Execution stage .....	10
4. 2. i. Writoffierifacis (FIFA) .....	11
4. 2. ii. Warrant of possession .....	13
4. 2. iii. Writ of attachment of Immovable property .....	13
4.2. iv. Writ of Sequestration .....	14
4.2. v. Garnishee proceedings .....	15
4.3. Post Enforcement / Execution stage .....	21
5. Stay of Execution .....	22
6. Wrongful Execution / Irregular Issuance of writ .....	22
7. CONCLUSION .....	23

## 1. INTRODUCTION

One of the cardinal responsibilities of the Court is to ensure that its orders and decisions are carried out or enforced. It is expressed in the case of *Amori v. Iyanda*<sup>1</sup> that:

It is the bounden duty of the courts to effect court judgments and orders, and to ensure speedy resolution and closure of disputes.

The above decision of the court of Appeal is directed at none other than the Chief Registrar, who invariably is the Deputy Sheriff, and also, by extension, to all relevant personnel in the department responsible for the enforcement/execution of court decisions, including the Bailiffs.

In the various courts, the Enforcement/Execution Department is saddled with this noble responsibility. This Department, usually under a Deputy Chief Registrar or Director, is directly answerable to the Chief Registrar of the court, who is the Deputy Sheriff and enforcer of all court judgments and orders.

For a better appreciation of this topic under discussion, we view the procedural steps in enforcement of judgments and orders of courts into three (3) major categories, namely;

- i. **Pre Enforcement stage,**
- ii. **Enforcement stage,** and
- iii. **Post Enforcement stage.**

However, it is important that we refresh our memories on how the courts derive their power to enforce judgments and orders.

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<sup>1</sup> (2008) 3NWLR (pt. 1074) 250 at P. 284

## **2. POWER FOR ENFORCEMENT**

The power of the courts to enforce judgments and orders has been enshrined in various legislations as follows:

### **2.1. CONSTITUTIONAL POWER:**

The powers to enforce and to also ensure that court orders are complied with are vested in the courts by the 1999 Constitution.

(i). Section 6 (6) (a) of the 1999 Constitution states:

*(6) The judicial powers vested in accordance with the foregoing provisions of this section-*

*(a) Shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law;*

(ii). While Section 287 of the 1999 Constitution states that:

*287. (1) The decisions 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, the 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 of law with subordinate jurisdiction to that of the Federal High Court, the National Industrial Court, a High Court and those other courts, respectively.*

## **2.2. OTHER STATUTORY PROVISIONS**

- (i). Sheriffs and Civil Process Act, 2014
- (ii) Enforcement of Judgments and Service Process Rules,
- (iii) Judgment Enforcement Rules of Court.
- (iv). Sheriffs and Civil Process Laws of the various states.

It is primarily from the above constitutional and statutory provisions that the powers of the courts to enforce and give effect to their judgments/orders are derived. What then is judgment/order?

### **3.1. JUDGMENTS/ORDERS DEFINED:**

The Supreme Court, in the case of *Okoya v. Santill*<sup>2</sup> defined judgments and orders as follows:

Judgments and orders are usually determinations of rights in the actual circumstances of which the court has cognizance, and give some particular relief capable of being enforced.

In other words, the mere pronouncement by the courts through judgments and orders does not necessarily bring a litigation process to an end; more often than not, these orders and judgments require enforcement for a litigation process to come to an end. And this is why a litigant cannot boast of victory in a judicial process even where the court decides in his favour, until such order or judgment is successfully enforced. Anything short of it can only be regarded as a pyrrhic victory.

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<sup>2</sup> (1990)2 NWLR (pt.131) 172

It is important to note that, in the enforcement of court orders and judgments, one should strictly adhere to relevant procedures as laid down both by case laws and statutory provisions. This is very important because it is quite possible for a litigant to secure judgment or an order in his favour, and yet be frustrated from reaping the fruit of his judgment due to incompetence or non-adherence to the proper procedure for enforcement.

Basically there are two types of judgment/orders- the **unenforceable** and the **enforceable judgments/orders**. Our focus shall be on the enforceable orders and judgments, but it is prudent that I briefly discuss the nature of unenforceable judgments/orders, for a balanced consideration.

### **3.2. UNENFORCEABLE JUDGMENTS/ORDERS**

#### **i. Declaratory Orders:**

Not every judgment/order of court is enforceable. In such a situation, all that the litigant needs is just the judgment or the order. One of such is a declaratory order. A declaratory order does not require enforcement, since all it needs is that such an order merely declares the rights of the parties in the matter.

In buttressing this fact, the Supreme Court in the case of ***Oba Rasheed Ayotunde Olabomi & Anor. V. Olabode Oyewinle & Ors***<sup>3</sup>, held that:

A Declaratory judgment or order is one that proclaims or declares the existence of a legal relationship, but does not contain any order which may be enforced against the defendant. Once rights declared in a declaratory judgment are infringed fresh proceedings are needed for enforcement.

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<sup>3</sup> (2013) LPELR – 20969 (SC)

Declaratory judgments cannot be enforced by execution, as there is nothing to enforce. So, where a court delivers a declaratory judgment, the party appealing may be granted an injunction if he deserves it but never a stay of execution pending the determination of the appeal.<sup>4</sup>

It is very clear from the above that a declaratory order only declares the existence of a legal relationship or right, but where the party to which the order is directed at fails to comply, the one in whose favour such an order was made, is incapable of executing same. His only recourse is to commence fresh proceedings to be able to enforce same. While the remedy for a party that is dissatisfied with such an order can only be for an application for injunction, and not a stay of execution.

Put differently, a declaratory order is a dormant right that can only be activated by fresh proceedings. Furthering this position, the Supreme Court, per Karibi Whyte, JSC<sup>5</sup> said that:

...It is a matter of general consensus among academic writers and judicial decisions that a declaratory judgment which is an embodiment of the recognition of a particular right may be the basis for subsequent proceedings to enforce such rights, where such right is threatened or is being threatened or is being violated. It seems to me correct to postulate that a declaratory judgment or order is recognition of a dormant right. Hence a declaratory order or judgment remains a dormant right until subsequent proceedings have been taken

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<sup>4</sup> Cf. *Shodeinde v. The Registered Trustees of Ahmadiya Islamic movement – In – Islam* 1980 1-3 SC Pg 163

<sup>5</sup> *OKOYA V. SANTILLI*: Supra; @ 228

to protect the threat to or violation of the rights so declared in the judgment order.

## **ii. Interlocutory Orders:**

Interlocutory orders and judgments are on the same footing unenforceable for the reason that, at that stage, the rights of parties are yet to be finally disposed of or determined. However, in some cases an interlocutory order which terminates part of a case can be enforced while the rest of the case goes on.

See the following cases:

- 1. AFUWAPE V. SHODIPE 2 FSC 62 @ 64 (1957).**
- 2. TOMAS (NIG) LTD. V. MINISTER OF WORKS AND HOUSING (2001) 10 NWLR (Pt. 721), 287 @ 294.**

## **3.3. ENFORCEABLE JUDGMENTS AND ORDERS**

Enforceable judgments/ orders are also known as executory judgments/orders. Executory judgments are judgments which declare the respective rights of the parties and then proceed to order the defendant to act in a particular way or restrain from so acting. These judgments are by nature enforceable immediately.<sup>6</sup>

Unlike declaratory judgments/orders, an executory judgment/order is mandatory, with its wordings clearly and unambiguously directing a particular step or restraining a particular action. It is that clear directive that is to be enforced if flouted. It is not merely interpretative or expository. It implies an emphatic directive or order.<sup>7</sup>

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<sup>6</sup>Cf: Osho v. A.G Ekiti State (2001) 46 W.R.N 22 @ 42

<sup>7</sup>Idika&Ors v. Offia&Ors (2017) LPELR - 4228

This is because judgments of courts are meant to be obeyed without demand, and failure to obey same would make the party entitled to judgment to apply to enforce same accordingly.

This brings us to the first stage of the enforcement procedure.

#### **4.1. THE PRE-ENFORCEMENT/ EXECUTION STAGE.**

#### **CONDITION PRECEDENTS TO ENFORCEMENT OF JUDGMENTS AND ORDERS**

Sections 3 & 4 of the Sheriffs and Civil Process Act provide for the offices of the Sheriff and the Deputy Sheriff for each state of the Federation and that of the Federal Capital Territory. Usually, it is the office of the various Chief Registrars that perform the job of the Deputy Sheriff. Under the Sheriff are the Bailiffs, through whom the functions, as conferred by the Sheriffs and Civil Process Act (SCPA) are discharged. Such functions are the execution of writs, service of processes, warrants, among others.

A judgment creditor is entitled to apply for the enforcement of a judgment against a judgment debtor under the following conditions:<sup>8</sup>

- (a) the time for compliance with which has arrived,
- (b) which has not been satisfied
- (c) which requires the payment of money, or which directs its recovery,
- (d) 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,
- (e) which is not stayed or on which execution is not stayed,
- (f) which has not become statute barred;

Also, courts do enforce:<sup>9</sup>

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<sup>8</sup>AfeBabalola SAN; Enforcement of Judgments, AfeBabalola publisher, 2003 Ed. P. 6 & 7

- (a) Orders of Industrial Tribunals.
- (b) Awards on Arbitration governed by the Arbitration Act.
- (c) Maintenance orders in matrimonial matters.

When the above relevant conditions are present, the judgment creditor as the beneficiary, then applies to the court that determined the matter or that gave the order for the enforcement, for the necessary documents and forms to enable him reap the benefit of the judgment. The application is written to the Judge/Magistrate/District Judge through the Registrar of the court, who in turn seeks the approval of the Judge/Magistrate/District Judge to prepare the Forms for his endorsement and transmission to the Execution/Enforcement Department for enforcement.

Upon receipt of the file, the department registers and assigns it to an officer who in turn gets the written approval of the Deputy Sheriff through the relevant Director in charge of enforcement.

If it is a foreign judgment, it is passed through either a Magistrate/District or High Court Judge for the necessary order and transmission of same to the Deputy Sheriff through the enforcement unit or department for approval. The bailiff(s) must first register their proposed date for execution, type of judgment or order to be executed and the exact place before setting out.

Following this approval, a letter requesting for armed Police men is usually sent to the appropriate police authority. For instance, in the High Court of the Federal Capital Territory, Abuja, we write to the FCT Police Command to provide security to the bailiff(s) for maintenance of law and order during and after the exercise. Luckily for us in the FCT, we have a police unit called the Judges Protection Unit (JPU), located inside the High Court Complex at Maitama, Abuja. The FCT Police Command, on receiving our request, sends signal to the head of the JPU who then details some

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<sup>9</sup> Ibid

policemen to accompany the bailiffs and other relevant court staff for execution/enforcement of the court order/judgment. The enforcement team informs the nearest Divisional Police Station of their presence before proceeding to carry out the exercise. In other jurisdictions without the JPU, the Deputy Sheriff's office applies to the relevant police authority in their jurisdiction for policemen to join the enforcement team.

The Judgment creditor, when necessary, points or provides a pointer to guide the enforcement team as to the proper venue for enforcement.

## **4.2. EXECUTION/ENFORCEMENT STAGE**

At this second stage of enforcement/execution of court order/judgment, the method to be adopted will depend upon the nature and type of such judgment or order. The Supreme Court, in the case of ***Okoya v. Santilli***<sup>10</sup> has itemized the methods of enforcing different kinds of judgments as follows:

- (i) A judgment/order for payment of money may be enforced by a writ of fierifacias, garnishee proceedings, a charging order, a writ of sequestration or an order of committal on a judgment debtor's summons.
- (ii) (ii) A judgment for possession of land may be enforced by a writ of possession, a writ of sequestration or a committal order.
- (iii) (iii) A judgment for delivery of goods may be enforced by a writ of specific delivery or restitution of their value, a writ of sequestration or writ of committal.
- (iv) (iv) A judgment ordering or restraining the doing of an act may be enforced by an order of committal or a writ of sequestration against the property of the disobedient person.

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<sup>10</sup>. (1990) LPELR – 2504 (SC)

See the following relevant statutory provisions for guidance:

- (i) Section 20 Sheriffs and Civil Process Act.
- (ii) Section 94(1) Sheriffs and Civil Process Act.
- (iii) Order IV Rules 1(2),5 and 16 of the judgment [Enforcement] Rules.
- (iv) Section 2 part 1 Judgment [Enforcement] Rules.

Basically, the department receives and executes three (3) types of Forms, namely; Warrant for Possession, Writ of Attachment and Sale of Goods and Writ of Attachment against Immovable Property and Orders from courts.

#### **4.2.i. WRIT OF FIERI FACIAS (FIFA)/ ATTACHMENT & SALE OF GOODS:**

Writ offierifacias, otherwise known as writ offifa is a writ issued to enforce a judgment or order for the payment of money to any person, or for the recovery of money by any person. Strictly speaking, service of a court order on judgment debtor who is deemed aware of the court decision or any order prior to execution, may just be a mere surplusage.

In the case of ***Olatunji v. Owena Bank Plc***<sup>11</sup> the Supreme Court held that:

The practice which is well established for many years, is clear, that a Writ of fifa may issue immediately upon payment becoming due upon a pronouncement in a judgment and as a matter of course without leave and without the necessity of a

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<sup>11</sup> (2008) 8NWLR(pt. 1090) 668 at 680

prior notice to; or for prior service of the judgment or order upon the judgment debtor. Per MUSDAPHER, JSC. (Pp.13-14, Paras.G-A)

This writ is also known as writ of attachment and sale of goods. A writ of attachment authorizes the seizure of any valuable moveable property of the judgment debtor wheresoever they may be found within the relevant judicial/magisterial division, and such includes money, bank notes, cheque, bill of exchange, promissory notes and or other security for money with the exception of wearing apparels, beddings and tool and implement of trade to the value of Ten Naira (N10)

This is in line with Section 25 of the SCPA that states:

*Every sheriff or officer executing any writ of execution issued from a court against the goods or chattels of any person may by virtue thereof seize-*

- a. any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family and the tools and implements of his trade, to the value of ten naira, which shall to that extent be protected from seizure; and*
- b. any money, bank-notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.*

### **Attachment Exercise:**

More often than not, the bailiff, upon introducing himself, usually serves a copy of the order of court on the judgment debtor prior to enforcing a writ of attachment. Where the judgment debtor complies with the order of court by paying the sum due, there will be no need to attach same, but

where he fails to comply, the officers will proceed to attach any moveable item of value they can find.

During the attachment, the bailiff must fill two forms; an inventory form (which contains the complete inventory of all attached items) and a Take Notice form (which contains the details of the judgment debtor's total indebtedness to the creditor as well as the time frame within which the attached items will be due for auctioning) which he must serve on the debtor or drop copies in his absence or refusal to acknowledge such. After the attachment, the items by law will be due for auctioning after five (5) days from the day of the attachment.

#### **4.2.ii. WARRANT FOR POSSESSION**

The purpose of this warrant as the name implies is to recover possession of a property. It could be a tenancy matter for the recovery of possession or upon declaration of title.

The warrant for possession is the most straight forward form among them because it recovers possession whether or not the judgment debtor is found in the said premises. All the bailiff needs to do is paste a copy of the warrant on the property to be recovered and then proceed to open or in some instances, where necessary, break the door to gain access, and if such a property is occupied by a tenant or anyone else the bailiff will have to evacuate all the property before handing over vacant possession to the judgment creditor.

Also, the said warrant in some instances could be issued against a vacant land (undeveloped land), in such instance, the bailiff executes it by pasting/placing the warrant at a conspicuous place on the property and possession is taken and handed over to the judgment creditor.

However, unlike warrant for possession, a writ of attachment does not authorize a bailiff to break and enter the premises where neither the debtor nor any person is available but where the debtor or any other person is found but they resist the officers from gaining access, the bailiffs usually call in aid the police officer in the team, if necessary, use reasonable force to gain access into the place, to effect the order of court.

#### **4.2.iii. WRIT OF ATTACHMENT OF IMMOVABLE PROPERTY:**

The Sheriff and Civil Process Act<sup>12</sup> provides for the requisite guides for attachment of immovable property.

The writ of attachment of immovable property is as prescribed in form 38 of the Act. This form is used to attach and dispose the immovable property of a judgment debtor. However, this form is hardly issued in the first instance, in fact, as a pre-condition for its issuance, the applicant must, as a requirement, satisfy the court that he has taken every step towards liquidating the debt by levying execution on the movable property of the debtor, which in some instances could not be found or those found were not reasonable enough to satisfy the judgment sum. It is important to mention that, unlike the warrant for possession, in executing a writ of attachment against an immovable property, it is not necessary to vacate everything found in the property, however, in practice, the property must be vacant or vacated for ease of disposal.

#### **4.2.iv. WRIT OF SEQUESTRATION OR AN ORDER OF COMMITTAL ON A JUDGMENT DEBTOR'S SUMMONS**

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<sup>12</sup> SS. 44 & 46

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

Section 82 of the Sheriffs and Civil Process Act states:

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

From the above, a writ of sequestration can only be issued against the property of a person whom a court order for his arrest and commitment has been made; against a person to whom the order is made but cannot be found, or if the person, despite being detained refuses to obey the order for which he has been detained. Sequestration is a process of contempt<sup>13</sup>. Where a defendant is required to do or abstain from doing any act, it is very appropriate to come by way of writ of sequestration or an order of committal.

#### **4.2.v. GARNISHEE PROCEEDINGS<sup>14</sup>**

Garnishee proceeding has been defined as:

... a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor, which form part of his property available in execution..... by this process, the Court has power to order a third party to pay direct to the judgment creditor the debt due from him to the judgment debtor or as much of it as may be sufficient to satisfy the amount of the

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<sup>13</sup> PRATT V. INAN (1890) 43 CH.D 17)

<sup>14</sup> SS. 83 & 84 SCPA

judgment and the cost of the garnishee proceedings.<sup>15</sup>

We should note that garnishee proceeding is a separate and distinct action between the judgment creditor and the person or body holding in custody the assets of the judgment debtor, although it flows from the judgment that pronounced the debt owing<sup>16</sup>

It is also important that we bear in mind that garnishee proceeding is separate and distinct only to the extent that it is started as a separate process from the judgment it wants to enforce.

In the case of ***Purification Tech (Nig) Ltd. v. A.-G., Lagos State***<sup>17</sup> the Court of Appeal held as follows:

*There is clear distinction between execution of judgments and other methods of enforcing judgments, such as garnishee proceedings. The distinction is brought out by the definition of 'writ of execution' in section 19 of the Sheriffs and Civil Process Act, Cap. 407, Laws of Federation, 1990. Writ of execution includes writ of attachment and sale, writ of delivery, writ of possession and writ of sequestration. It excludes a garnishee proceeding. The distinction is further made clear by the learned authors of Atkin's Court Forms Volume 19, 2nd edition paragraph 21 on page 47 thus: "Garnishee proceedings or attachment of debts is a method auxiliary to that of execution for the enforcement of a judgment or order for the payment of money which is not for payment of money into court enabling the judgment creditor to attach money due to the judgment debtor from a third person called the garnishee, who must be within jurisdiction." In the respondent's brief reference is made to Order VIII rule 7(1) of the Judgments (Enforcement) Rules. The rule demonstrates the clear difference and distinction between the two modes of enforcement. This rule clearly*

<sup>15</sup> UBN PLC V. Boney Marcus Ind. Ltd (2005) 13 NWLR (pt. 943) 654 at 666, Akintan JSC

<sup>16</sup> Cross River State Forestry Commission & Anor V. Anwan & Ors (2012) LPELR 9479 (CA)

<sup>17</sup> (2004) 9 NWLR (pt. 879) 665

*provides for garnishee proceedings. Rule 7 of the order makes specific provisions for writs of execution to issue against the garnishee. It makes it clear that in the scheme of enforcement of judgments established under the Judgments (Enforcement) Rules of the Sheriffs and Civil Process Act, enforcement by execution is not the same thing as enforcement by garnishee proceedings. Where that to be the position, then there would be no need for express provision that execution could issue against garnishee. If the submission of the learned counsel for the respondent were correct, the provision enabling execution to issue against a garnishee would be superfluous. It means that once a garnishee order is made absolute then execution would follow automatically, if the respondent were correct. The provision therefore not being superfluous, there is need for enforcement by writ of execution against the garnishee.*

*Execution of a judgment entails the seizure and sale of chattels of the judgment debtor under warrant of court. This is different from attachment of debt owed to a judgment debtor by a third party, who is indebted to the judgment debtor and not proceedings against the judgment debtor directly." Per GALADIMA, J.C.A (Pp. 21-22, paras. A-E"*

There are two stages in a garnishee proceeding; the first stage is the process of getting an order nisi. The order nisi directs the garnishee to appear in court on a specified date to show cause why an order should not be made upon him for payment to the judgment creditor the amount of the debt owed to the judgment debtor. This is usually done ex parte and limited to the judgment creditor and the Court.

The second stage is where on the return date the garnishee does not attend, or does not dispute the debt claimed to be due from him to the judgment debtor, the court may subject to certain restrictions, make the garnishee order absolute under which the garnishee is ordered to pay to the judgment creditor the amount of debt due from him to the judgment debtor, or so much of it as is sufficient to satisfy the judgment debt together with the cost of the proceedings and cost of garnishee. This later proceeding is tripartite between the judgment debtor, judgment creditor

and the Garnishee. This is because on the return date all parties must have been served and given an opportunity to dispute liability or pray that the order nisi be discharged for one cause or the other.

The garnishee may dispute his liability to pay the debt; as in this case. He will appear in court on the return date and dispute his liability by denying indebtedness to the judgment debtor. He must also make out a prima facie case in favour of an order for an issue to be tried.

It is important to note that a garnishee proceeding is a judicial act unlike other modes of executing a judgment or an order of the court which are purely administrative.

We should equally note that Section 84 of the Sheriff and Civil Process Act is very clear and unambiguous with regard to the procedure to be followed in a garnishee proceedings where money to be attached is in the custody or under the control of a public officer in his official capacity or in custodia legis. Under the aforementioned section, consent of the Attorney General of the Federation is required before a court can validly issue a garnishee order Nisi against funds in the hands of a public officer.

This issue was well articulated and encapsulated in the case of **University of Calabar Teaching Hospital v. Lizikon Nigeria Limited & Anor.**<sup>18</sup> thus;

*Arguably, from the issue of jurisdiction raised in the Appellants' preliminary objection in question, it is pertinent to postulate that equally germane to the case is the likely question of whether or not the prior consent of the appropriate public authority is a pre-condition or condition precedent to instituting the garnishee proceedings to attach the judgment sum in custody of a public or in custodia legis of a Court; See Section 84 (1), (2) and (3) of the Sheriffs and Civil Process Act; Section 318 (1) of the 1999 Constitution, as amended, and Section 18 (1) of the Interpretation Act. Section 84 of the Sheriffs and Civil Process Act (supra) provides:*

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<sup>18</sup> (2017) LPELR – 42339 (CA)

*84. Consent of appropriate officer or Court is necessary if money is held by public Officer or Court:*

*(1).....*

*(2) .....*

*(3) In this Section, appropriate officer means-*

*(a) In relation to money which is in custody of a public officer who holds a public office in the public service of the Federation, the Attorney-General of the Federation;*

*(b) In relation to money which is in the custody of a public officer who holds a public office in the public service of the State, the Attorney-General of the State.*

*Whereas, under Section 318 of the 1999 Constitution, it is provided:*

*(1) In this Constitution, unless it is otherwise expressly provided or the context otherwise requires- Public Service of the Federation means, the service of the Federation in any capacity in respect of the Government of the Federation, and includes as-*

*(e) Staff of any Statutory, Corporation established by an Act of the National Assembly.*

*Again, under Section 18 of the Interpretation Act (supra), it is equally provided: In an enactment, the following expressions have the meanings hereby assigned to them respectively, that is to say- Public Officer "means a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria, 1999 or the Public Service of a State. Hence, from the combined effect of the foregoing provisions of Section 84 (1), (2) & (3) of the Sheriffs and Civil Process Act (supra), Section 318 (1) of the 1999 Constitution as amended, and Section 18 (1) of the Interpretation Act (supra),*

*it is rather arguable that the Appellant is a public officer being a part of the Public Service of the Federation of Nigeria.*

Thus, where money liable to be attached by Garnishee Proceedings is in the custody or under the control of a public officer in the official capacity thereof, or in "custodia legis" of a Court, as the case may be, the order Nisi shall not be made under Section 83 of the Sheriff and Civil Process Act (supra), unless consent to such attachment is first and foremost sought and obtained from the appropriate public officer, i.e. the Federal Attorney-General or State Attorney-General, as the case may be. As aptly reiterated by this Court- It will not matter that the Federal/State Attorney-General were a party to the action, his consent must still be obtained. It follows therefore that in the instant matter, the judgment sum enforced by the Respondent/Judgment creditor, the appropriate authority is required. The prior consent of the appropriate authority is therefore a pre-condition or condition precedent to instituting garnishee proceedings to attach money in custody of a public officer or "in custodia legis" of a Court. See CBN vs. OKEKE (2015) LPELR- 24825 (CA) per Omoloye, JCA @ 13 - 17. See also CBN v. AMAO (2010) 16 NWLR (Pt. 1219) 271; CBN v. HYDRO AIR PTY LTD. (2014) 16 NWLR (pt. 1434) 482; CBN V. J.I. NWANYANWU & SONS ENT. NIG.LTD; (2014) LPELR-22745; UTOMUDO V. MIL.GOVERNOR BENDEL STATE (2015) EJSC (Vol. 3) 1.

Undoubtedly, the issue of constitutionality of requiring the prior consent of the Attorney-General before issuance of garnishee order Nisi under Section 84 of the Sheriffs and Civil Process Act (supra) has been far reachingly dealt with and determined in a plethora of veritable authorities, inclusive of the ones alluded to above. See also ONJEWU v. KOGI STATE MINISTRY OF COMMERCE & INDUSTRY (2003) 10 NWLR (Pt. 827) 40; GOVT. OF AKWA IBOM STATE vs. POWER COM (NIG) LTD. (2004) 6 NWLR (Pt. 808) 202. The whole essence of the decisions of the foregoing authorities in upholding the requirements of Section 84 (1) of the Sheriffs and Civil Process Act (supra) et al, was- "to ensure sound public administration and were a matter of public policy aimed at protecting public funds".

See ODE v. A-G, BENUE STATE (2011) LPELR- 4774 (CA), per Kekere-Ekun, JCA (as the learned Lord then was) @ 49 - 50 Paragraphs F - F; See

also ONJEWU VS. KSMC (supra) @ 1615 Paragraphs D-G; CBN VS.OKEKE (supra).

Per SAULAWA, J.C.A. (Pp. 21-25

In spite of these decided authorities, a legal luminary<sup>19</sup> has argued persuasively, that Section 84 of the Sheriffs and Civil Process Act is unconstitutional, especially in the face of Sections 6 (6) (b) and 1 (3) of the Constitution. And has gone further to query, whether, in view of the combined effect of Sections 1 (2) and 31-41 of the CBN Decree, No. 24 of 1991, and Section 61 of BOFID, No. 25 of 1991 which makes the Central Bank a banker for all levels of governments and it's agencies, as well as for other banks, money in the Central Bank can well be said to be in the custody of a public officer? I will leave you with this issue to ruminate on, for now.

#### **4.3. POST EXECUTION/ENFORCEMENT STAGE (AUCTION)(S. 29& 30 SCPA).**

After a successful attachment of either movable or immovable property (as the case may be) a copy of the inventory of the attached item(s) is sent to the Federal Ministry of Works Power and Housing, in the case of the FCT or to the relevant Ministry, in the case of a State, for valuation. This is done by a physical inspection of the property to ensure a reasonable and professional report known as the **valuation report**. The valuation report is filed and sent to the Deputy Sheriff for an approval to auction the property. When approval is granted, a date is then fixed and published for the auction which by law and our practice should not be less than five (5) days next following the date of the sale. After the publication, the file is then assigned to one of the retained licensed and registered auctioneers engaged by the relevant court for this purpose.

At the venue on the day of auction, the item(s) are displayed and disposed of, by way of public bidding, to the highest bidder and whatever amount is realised would be remitted into the enforcement account from which the

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<sup>19</sup>AfeBabalola. Op Cit. Pp. 137 - 138

department also releases to the judgment creditor upon his application. However, in the case of an immovable property, the sale only becomes absolute at the expiration of 21 days from the date of sale and a certificate of title will be issued to the buyer before the money can be released to the judgment creditor. The hours for the auction are between 7:00 am to 8:00 pm. The property is sold to the highest bidder. Notice for auction is published, at least, 4 days, before the auction, as ordered by court. Judgment sum by default is paid to the judgment creditor unless he/she donates a power of attorney that dictates otherwise.

## **5. COURT'S INHERENT POWER TO GRANT OR STAY EXECUTION**

Note however that all Courts of record, trial or appellate, have inherent power to grant a stay of execution of judgment or to refuse it.<sup>20</sup>

Where a notice of appeal is coupled with a motion on notice filed for stay of execution of the judgment appealed against the victorious party is not permitted to levy execution during the pendency of the application for stay of execution. This is because that would result in stultifying the Court's exercise of its discretion and foisting the Court with a *fait accompli*.<sup>21</sup>

Also, issuance of a writ of *fi fieri* for the execution of a judgment when knowledge of the pendency of an application for stay of execution could be imputed to the issuing Court is incompetent.<sup>22</sup>

## **6. DIFFERENCE BETWEEN WRONGFUL EXECUTION AND IRREGULAR ISSUE OF WRIT OF ATTACHMENT**

There is also a distinction between a wrongful execution and an irregular issue of a writ of attachment. In the case of **Oba A. Adeosun Adesina v.**

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<sup>20</sup>Cf. *Nigerian Breweries Plc v. Osho* (2001) 7 NWLR (716) 746, 762

<sup>21</sup>*Vswani Trading Co. v. Savalkh & Co.* (1972) All NLR. 922, 927

<sup>22</sup>*Nitel Plc v. ICIC* (2009) 16 NWLR (Pt 1167) 356, 384

**K. A. Akinremi&Ors.**<sup>23</sup> The court held that a wrongful execution is a trespass and generally presumes that the writ was regularly issued but that its execution was neither authorised nor justified by the writ nor the judgment under which it was issued; whereas an irregular issue of a writ of attachment is where the writ ought not to have been issued in the first place because the requirement of the rules of court or of practice for the time being, have not been complied with.

However, Section 43 of the SCPA exempts the Sheriff from liability on the production of the court process, like a writ, as proof of due execution.

## **7. CONCLUSION**

In conclusion, I must state that enforcement of judgments/orders of court is a very onerous task that must be carried out diligently and responsibly by the relevant official whose duty is to perform this noble task. It demands the application of the best practices in court administration. This can only be achieved with sincerity of purpose, and above all, a near mastery of the extant laws, rules and regulations guiding enforcement of judgments and orders.

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<sup>23</sup> (1970) All Nigeria Law Reports pg. 559