

ENFORCEMENT OF JUDGMENTS IN NIGERIA: ISSUES, LAW AND CHALLENGES

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ABSTRACT: *Obtaining judgment from any court in Nigeria is not a final indication that the victorious party will automatically reap the fruits of his or her victory. It behooves a judgment creditor, the responsibility to initiate the legal machinery for the enforcement of judgments so as to claim the fruits of his victory. The legal duality and complexities involved in enforcement of judgments in Nigeria isn't only gargantuan, enforcement of judgments in Nigeria is very fluid and nebulous. If judgments are difficult to enforce in Nigeria; litigants' confidence in the justice sector will be impeded; commercial activities will be adversely affected and national development will be tremendously hampered. This paper examines the labyrinth of legal and institutional bottlenecks in enforcement of judgments in Nigeria. Doctrinal methodical strategy of legal research was adopted to analyze statutes, case law, journals and statutory modes of judgments enforcement in Nigeria. Existing researches on this complex but essential topical issue focuses on just one of the modes of judgment enforcements in Nigeria while this work attempts a holistic examination of the various modes of judgments' enforcement in Nigeria. At the end of the study, it was found out that existing legislations on judgments enforcement in Nigeria are obsolete; possess statutory bottlenecks and they are inadequate to assuage the suffering of judgment creditors; among others. It is highly recommended that case law interventions; statutory modifications and institutional developments are needed to fast-track judgment enforcement in Nigeria so as to meet the yearnings and expectations of judgment creditors; to enhance the confidence of litigants in the justice sector and stimulate development in Nigeria; to mention just a few.*

KEYWORDS: enforcement, garnishee, writ of FIFA, contempt, judgment debtors, judgment creditors

INTRODUCTION

Enforcement of judgments is a legal mechanism deployed by a victorious party (judgment creditor) in a litigation process whereby the victorious party realizes, obtains or assesses the fruits of his victory. The reliefs or decision granted by a court may not automatically be assessed by the judgment creditor if the judgment

debtor fails, refuses or neglects to obey the judgment. A court may award damages, make declarations of rights or order specific performance, depending on the reliefs sought before it.¹The process whereby the victorious party called the judgment creditor compels the judgment debtor or the party that lost to obey the judgment is what is called judgment enforcement procedures.² Unfolding of events in the various courts of Nigeria reveals that many judgment creditors find it very difficult, tasking and daunting to enforce their judgments. Quiet a reasonable number of judgment debtors and many unscrupulous legal practitioners abuse the processes of court to deny successful parties of the fruits of their victories by filing frivolous appeals coupled with stay of execution; some explore the loopholes in the provisions of the Sheriff and Civil Processes Act and the institutional bottlenecks in the appellate courts to hold successful parties in litigation to ransom. The general position of the law is that every judgment of the court whether correct or incorrect; whether plausible or not; must be obeyed unless the court directs otherwise.³ The beauty of the administration of justice system, is for the judgments of courts to be obeyed and not to be treated with disdain or impunity. The courts frown seriously at the disobedience of their judgments and courts will not hesitate to punish anyone who treat their judgments with impunity.⁴ If judgments of courts are not obeyed and the victorious parties cannot assess the fruits of their victory; parties to litigation may result to self-help and life may be nasty and brutish. Another serious implication of the inability to enforce judgments is that it discourages foreign direct investment and hampers economic development. Therefore, enforcement of judgments is an integral part as well as very fundamental issue in the administration of justice and national development. Litigation, orders and judgments of courts will be useless and meaningless if the judgments of courts are not obeyed. Orderliness, justice, peace, tranquility and economic development in a society may be a mirage and the very essence of justice may be defeated if courts order and judgments are despised.

Unfolding of events in Nigeria reveals that enforcement of judgments is slow; the procedures are cumbersome; existing legislations are obsolete and aid technicalities; case laws are confusing and conflicting and the existing institutional bottlenecks and frameworks for enforcement of judgments are worrisome.⁵ Justice is rooted in confidence and confidence is defeated if the system permits delay; aid injustice and create bottlenecks for the enforcement of judgments.

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

² The judgement creditor is a victorious party in a suit while the judgement debtor is the party that lost in the suit.

³ In *Amori v. Iyanda* (2008) 3 NWLR Pt. 1074, 250 at 284; it was held inter alia that judgements of the court are to be obeyed. it is also the duty of the courts to effect court judgements and orders.

⁴ Section 6(6) (a) of the 1999 constitution of Nigeria states thus: "the judicial powers vested in accordance with the foregoing provisions of this section: shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law."

⁵ O. Fabunmi and O. Akai (2009), *Execution of judgements and Means of Enforcement Available to a Court in Nigeria*, Journal of African Law, Vol. 32 Issue 2.

This paper is a critical examination of the various modes of judgment enforcement in Nigeria; it points out the identified gaps and flaws in the system; legislations relating to judgment enforcement as well

as case law will be evaluated with a view to making recommendations that will enhance judgment enforcement in Nigeria and its justice system.

CONCEPTUAL ANALYSIS ON JUDGMENTS' ENFORCEMENT.

Judgment

This is the pronouncement made by the court or the verdict entered by the court in respect of a suit before it. The parties before the court usually seek certain reliefs from the court whereby they ask the court to make pronouncements or declarations on their rights, obligations, duties and positions.⁶ It is the determination of the reliefs based on what is sought before the court that is called a judgment. The position of the law is that, however flawed or unreasonable the judgment of a court may be; it must be obeyed until it is set aside by the appellate court⁷. Similarly, a court of law cannot grant reliefs not sought before it and it ought not to decide issues not placed before it.⁸ The whole essence of the judicial system is the power of the court to make binding and enforceable judgments.⁹

The order made by a court is also the judgment of the court.¹⁰ While an order may under some circumstances amount to a judgment, in certain cases they are not the same. Rulings of courts on motions are ordinarily orders and they are not technically judgments.

Declaratory Judgments

It is not every order or judgments of a court that is enforceable. A typical example of an unenforceable judgments is a declaratory judgment or order. In **Irewole Local Government v Oyeyemi**¹⁰; it was held thus: *"A declaratory judgment cannot be enforced by execution but by a subsequent proceeding In which the declared rights which is being violated can be enforced...."*

⁶ 6 In *Okoya v Santi* (1990) 2 NWLR Pt. 131, 172 at 178; judgments and orders are defined thus: "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."

⁷ See *A.N.P.P. v Goni* (2012) 7 NWLR Pt. 1298, 147; *Okoye v Okonkwo* (2015) 5 NWLR Pt. 1451, 127; *Anambra State v. A.G Federation* (2005) 9 NWLR Pt. 931, 572.

⁸ See *Amaechi v. INEC &Ors* (2008) Vol. 158 LRCN 1 at 129.

⁹ Judicial powers have been interpreted to mean the powers which every sovereign authority must of necessity possess to enable it settle and decide controversies between its subjects. Judicial power is co – extensive with the power of the state to make laws and execute them. See *Abacha v. FRN* (2014) 6 NWLR Pt. 1402, 43. See also *Bronik Motors v Wema Bank Limited* (1983) 1 SCNLR 296. ¹⁰ Section 318 of the 1999 constitution of Nigeria (as amended) defines judgement as decision of the court. See also *Garuba v. Omoklodion* (2011) 15 NWLR Pt. 1269, 145 at 288. ¹⁰ (1993) 1 SCNJ, 127

A declaratory judgement 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.¹⁰ Once rights declared in a declaratory judgement are infringed, fresh proceedings are needed for enforcement. Declaratory judgement cannot be enforced by execution, as there is nothing to enforce. So, where a court declares a declaratory judgement, the party appealing may be granted an injunction if he deserves it but never a stay of execution pending the determination of the appeal.

Obviously, a declaratory order or judgement of a court is that which merely states, defines or declares the right of the parties to the suit. **Karibi Whyte, JSC** succinctly put it thus:

*“It is a matter of general consensus among academic writers and judicial decisions that a declaratory judgement which is an embodiment of the recognition of a particular right may be the basis for subsequent proceedings to enforce such rights, when such right is threatened or is being threatened or is being violated. It seems to mean correct to postulate that a declaratory or order is the recognition of a dormant right. Hence, a declaratory order or judgement remains a dormant right until subsequent proceedings have been taken to protect the threat to or violation of the right so declared in the judgement of order”.*¹³

Executory Judgement

These are the judgements or orders of a court which declare the rights and obligations as well as liabilities of parties to a suit and proceed to direct a party to act in a particular way or restrain them from doing certain things. Executory judgement is known as **enforceable judgement** and they are enforceable immediately they are pronounced.¹¹

Moreover, by their nature, executory judgements contain directives of court and they lucidly prescribe what is to be done unlike declaratory judgements that are merely interpretative or prescriptive.

Consent Judgement

Any form of judgement which is deliberately or mutually entered into by the agreement of parties before the court is a consent judgement. In other words, consent judgement is first agreed upon by the parties to a suit who thereafter present their agreements to the court and the court makes its pronouncement on it as a judgement of the court. Consent judgement is final, valid and binding on the parties.¹²

¹⁰ In *Ijebu – Ode Local Government v. Adedeji Balogun & Co* (1991) 1 SC Pt 1, 7; the Supreme Court held thus: “declaratory judgements merely declare to proclaim the state of things or the existence of a legal relationship and may not contain any order which can be enforced against a defendant.”¹³ See *Okoya v. Santili* (1990) 2 NWLR Pt. 131, 172

¹¹ In *Mrs Florence O. Carrena & Anor v. Chief Gafaru Arowolo & 2 Ors* (2008) 6-7 SC Pt. 1, 66; it was held thus: “executory judgements or others are those which declare the respective rights of the parties and then proceed to order the defendant to act in a particular way.”

¹² See *Star Paper Mill Ltd & Anor v. Bashiru Adetunji & Ors* (2009) 6-7 S.C. Pt. III, 68.

Default Judgement

This is the type of judgement obtained by the claimant where the defendant fails or refuses to enter appearance or file a defence to the originating process within the time prescribed in the rules of court.¹³ It can also be obtained where a defendant who filed a defence fails to appear in court on the date fixed for hearing. The failure of the defendant to file a defence raises a legal implication that the defendant has no defence to the claim of the claimant or that the defendant admitted the claim.

Default judgement is only grantable where the claimant's claim is for pecuniary damages or detection of goods with or without a claim for pecuniary damages. A default judgement is not a judgement on the merits and can be set aside by the court that grant it. The rules of court recognise different variants of default judgement, including judgement in default of appearance, judgement in default of defence, and judgement in default of appearance at case management conference.

METHODS OF JUDGMENTS ENFORCEMENT IN NIGERIA

One of the very essence of the justice sector in every country is the preservation of peace and maintenance of orderliness in the society. This is the rationale for the enforcement of judgements, and if judgments are not enforced, people or litigants may result to self-help and this maybe chaotic. Depending on the type of judgement made by a court, there are various means of enforcing judgments if the party against whom the judgement or order is made fails to honor or obey the judgement.

Garnishee Proceedings

This is usually deployed to enforce monetary judgment and it is the widest and most frequently used legal mechanism for the enforcement of monetary judgment in Nigeria.

Garnishee proceeding is a method of enforcement of monetary judgement where a judgement creditor may attach or garnishee debts or monetary judgement which a judgement debtor owes him by attaching the money of the judgement debtor which is in the hand of a third party called the garnishee.¹⁴ Simply put, where the judgement debtor has money in the hand of a third party (for example a bank), the victorious party called the judgement creditor can initiate proceeding to attach the money of the judgement debtor in the hand of the third party who is called a garnishee.

There are two stages of a garnishee proceeding and the first stage is the process of obtaining an order nisi. At this stage, the judgement creditor approaches the court by an ex parte application seeking the leave of the court to attach the funds of the judgement debtor which is in the hand of a third party.¹⁸ The court upon

¹³ See Chief Emmanuel Bello v. Independent National Electoral Commission & Ors (2010) 2-3 SC Pt. II, 128; See also Chief Emmanuel Bello v. Independent National Electoral Commission & 2 Ors (2010) 2-3 SC Pt. II, 128.

¹⁴ See Nigerian Telecommunications Plc v. ICIC (Directory Publishers) Ltd (2010) 6 NWLR Pt. 1190 at 227, paras B-D per Omokri, JCA. ¹⁸ S. 83(1) of the Sheriff and Civil Process Act Cap S6, Laws of the Federation of Nigeria, 2004 is to the effect that judgement creditor may compel the judgement debtor to show cause why he should not pay the judgement debt through an ex parte application.

hearing the application, makes an order nisi directing the garnishee to show cause why the funds of the judgement debtor in the hand of the garnishee will not be attached.¹⁵

The second stage is to make the order absolute.¹⁶ On the return date, which must not be less than 14 days; the court may, unless the garnishee show cause why the order absolute may not be made, make the order absolute. The order nisi is required to be served on the judgement debtor and the garnishee.¹⁸ The garnishee is required to file an affidavit showing cause.¹⁷ The judgement debtor cannot be heard in a garnishee proceeding, unless under certain few circumstances. It is only monetary judgement that are ascertainable that can be enforced through garnishee proceeding. S. 84 of the Sheriff and Civil Process Act is to the effect that where the money to be attached is in the hand of a public officer, the consent of the Attorney General must be sought. The appellate court has unambiguously held that the money of a public officer in the hands of a commercial bank does not fall into the categories of monies in the hand of a public officer and the consent of the Attorney General is not required to attach such.¹⁸

The propriety or otherwise and the constitutionality of S. 84 of the Sheriff and Civil Process Act vis – a – vis the consent of the Attorney General has generated so much debate. Learned writers and eminent jurists have contended that the provision is unconstitutional and unfair. Unfortunately, the position has not changed.¹⁹

Writ of Fieri Facias (FIFA)

This writ which is also known as writ of attachment or writ of FIFA is deployed to enforce monetary judgement and this can be issued against a judgment debtor immediately after the judgment, without notice to the judgment debtor.²⁵

This authorizes the seizure of any moveable property of the judgement debtor which can be found within the jurisdiction of the court, subject to certain restrictions. The properties that can be seized include money, bank notes, cheque, bill of exchange, promissory notes with the exception of beddings, tools of trade and wearing apparels of the judgement debtor.²⁶

¹⁵ See *Wema Bank Plc v. Brastern – Sterr Nigeria Limited* (2011) 6 NWLR Pt. 1242, 58.

¹⁶ E. Udim (2015), *Principles of Garnishee Proceedings in Nigeria*, Princeton & Associates Publishing Co. Ltd, Lagos, P. 37. ¹⁸ The Court of Appeal in *Wema Bank Plc v. Brastern – Sterr Nigeria Limited* (Supra) in considering sections 83(1), 83(2) and 86 of the Sheriffs and Civil Process Act stated inter alia that service of the order nisi on the judgment debtor and the garnishee is a condition precedent to the jurisdiction of the court to make an order absolute.

¹⁷ See *Purification Techniques Nigeria Limited v. Attorney General of Lagos State* (2004) All FWLR Pt. 211, 1479.

¹⁸ *ibid*

¹⁹ A. Babalola, SAN (2007), *Injunctions and Enforcement of Orders*, 2007 ²⁵ See *Olatunji v. Owena Bank Plc* (2008) 8 NWLR Pt. 1090, 668, at 680 ²⁶ See Section 25 of the Sheriff and the Civil Process Act.

This method of judgement enforcement is administrative. The judgement creditor approaches the registrar for the issuance of the writ upon the payment of the prescribed fee. The writ will be signed by the judge and forwarded to the Sheriff or bailiff for execution.

The Sheriff or bailiff will introduce himself to the judgement debtor, show him the writ and attach the moveable properties of the judgement debtor by taking them to the court and they will be sold by auction sale after five days.

Warrant for Possession

Warrant of possession is deployed to recover possession of a property where the property is in the hand of a judgement debtor. It could be a tenancy matter for the recovery of possession or upon declaration of title.

The warrant for possession can be used to recover possession whether or not the judgment debtor is found in the said premises or not. The victorious party moves the registrar of the court to issue a warrant which the judge will sign. The bailiff will paste a copy of the warrant on the property to be recovered and then proceed to open or in some instances, where necessary, break the door to gain access, and if such a property is occupied by a tenant or anyone else the bailiff will have to evacuate all the property before handing over vacant possession to the judgment creditor.

Moreover, a warrant of possession can be issued against a vacant land, whereby the bailiff executes the warrant by pasting the warrant at a conspicuous place on the property and possession is taken and handed over to the judgment creditor.

Writ of Attachment of Immovable Property.

Where judgment is obtained and the judgment debtor fails to pay the judgment debt; the immovable property of a judgment debtor may be seized and sold in satisfaction of the judgment.²⁰ In other words, the chattels and other movable goods of the judgment debtors can be seized and sold in satisfaction of the judgment debt. Execution can only be levied against the immovable property if no movable property of the judgment debtor can, with reasonable diligence be found, or if the movable property is insufficient to satisfy the judgment.

Sequestration or an Order of Committal on a Judgment Debtor's Summons

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

Section 82 of the Sheriffs and Civil Process Act states:

²⁰ See Sections 44 and 46 of the Sheriff and Civil Process Act to the effect that where the moveable property of the judgement debtor is not sufficient to satisfy the judgement debt; the judgement creditor can seek the leave of court upon notice of the judgement debtor to attach the immovable property of the judgement debtor.

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. 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.

CHALLENGES IN JUDGMENT ENFORCEMENT IN NIGERIA

The whole essence of the judicial system is predicated on the power of courts to make binding and enforceable judgements. Any clog in the wheel of judgement enforcement is not only a disservice to the administration of justice, but a call to anarchy, turbulence and chaos. The difficulty or impossibility of enforcing judgment can considerably affect economic and national development. Foreign investors will not be interested in a country where the orders and judgments of courts are treated with disdain. The rule of law will adversely suffer if the orders of courts are not obeyed by the government and the citizenry.

Enforcement of judgments in Nigeria is suffering from labyrinth of legislative, administrative, judicial and legal impediments. It is very unfortunate that the process of enforcing judgements in Nigeria is more arduous and tasking than the process of obtaining judgements.

Apparently, if this ugly trend is not urgently averted, the confidence of litigants in the Nigeria's justice system will be eroded and recourse to self – help will hold sway with its attendant implications and complications.

One of the major bottlenecks to judgements' enforcement in Nigeria is the indiscriminate or arbitrary use of applications for stay of execution and injunction pending appeal to frustrate judgement creditors by the judgement debtors. The essence of stay of execution and injunction pending appeal is to preserve the res and prevent a situation of helplessness being foisted on the appellate court.²¹ However, in practice, stay of execution and injunction pending appeal have been abused, misused and misapplied to deprive judgement creditors of the fruits of their success.²² When application for stay of execution is refused by a court, the

²¹ O. Shasore SAN and B. Salihu, (2020) *Enforcement of Judgements*, Global Practice Guide, P. 5.

²² A. Babalola (2003), *Enforcement of Judgements*, Life gate Publishing Co. Ltd, P.2.

judgement debtor can file the application at the appellate court.²³ At the moment, it takes an average of six years or more for an application filed at the Supreme Court of Nigeria to be heard. Where an application for stay of execution is filed and has not been heard; it is a technical stay.²⁴ The judgement creditor cannot enforce the judgement. Obviously, where a judgement debtor files application for stay of execution at the Supreme Court; the judgement creditor becomes weary and discouraged. So many litigants in contemporary times are merely given judgements at the trial court, but they are unable to enforce the judgements, thereby turning their victory to illusion.

Moreover, the Supreme Court of Nigeria is preoccupied with many cases and most cases that moved from the Court of Appeal to the Supreme Court hang in – between for years, some spanning twelve years. This delay is unacceptable and it wrought serious injustice to litigants. The case of *Central Bank v. Igwilo*²⁵ took an average of thirteen years from the Federal High Court to the Supreme Court and the position is worse now. It was a case of unlawful termination of appointment. Unfortunately, the judgement creditor died in penury before the judgement at the Supreme Court was delivered. The institutional bottleneck at the Supreme Court has rubbished the Nigeria justice sector. Delayed justice is no justice and a situation where litigants do not know when their cases will be heard because of institutional bottleneck is anachronistic, obsolete and unjustifiable.

The provision of S. 84 of the Sheriff and Civil Process Act is to the effect that monies in the hand of a public officer cannot be enforced or attached unless the consent of the Attorney General is sought and obtained.

The requirement for the consent of Attorney General has been upheld by the courts and garnishee orders made without compliance with Section 84 of the Sheriff and Civil Process Act were set aside. In *Government of Akwa Ibom State v. Powercom Nig. Limited*²⁶; the Court of Appeal held that the provisions of S. 84(1) of the Sheriff and Civil Process Act was not inconsistent with the provisions of the 1999 Constitution.

²³ See *A.M Co. Nig. Ltd v. Volkswagen Nig. Ltd* (2012) 11 NWLR Pt. 1312, p. 405; Also, by virtue of Order 7 Rule 4 of the Court of Appeal Rules, where an applicant applies to stay the judgement of the lower court, the application must first be made before the lower court and when it is refused by the lower court, it can be represented at the appellate court.

²⁴ In *Ezegbu v. F. A. T. B.* (1992) 7 NWLR Pt. 251, P. 8 and *Ojukwu v. Governor of Lagos State* (1985) 2 NWLR Pt. 10, 106; it was held that where an application for stay of execution is filed before a court and the notice of such application has been served on the respondent, the respondent should not take any further step in enforcing his judgement until the court determines the application for stay.

²⁵ (2007) 14 NWLR Pt. 1054, 393

²⁶ (2003) 10 NWLR Pt. 827, 40

The constitutionality or otherwise of this provision has generated so much judicial attention from learned jurists and writers.²⁷The provision has hampered enforcement of judgements obtained against government as many litigants find it difficult, if not impossible to enforce monetary judgements against governments in Nigeria. This provision can only be effective in advanced country where the government is responsible and responsive. It is doubtful if any government; be it state or federal government will ever consent to the enforcement of judgement against it. Unfolding of events in Nigeria has revealed that the Central Bank of Nigeria as garnishee in most enforcement proceeding has been wielding the provision of S.84 SCPA as a shield to deny judgement creditors of the fruits of their victory in plethora of decided judicial authorities.

In recent times, the Federal Government of Nigeria do not patronize commercial banks for the custody of their funds as their funds are now kept in Single Treasury Account (STA) warehoused at the Central Bank of Nigeria. The implication of this is that money kept with the CBN can only be attached with the consent of the Attorney General of the Federation being sought and obtained.

In the recent case of **CBN v. Interstella Communications Ltd**³⁰; the court provided a little respite on the applicability of S. 84 SCIA. The court held inter alia that the requirement for the consent of the Attorney General is not applicable and is unnecessary if the Attorney General of the Federation or of a state is a party to the proceeding leading to the judgement debt. Although this judicial intervention is a plausible attempt at cushioning the debilitating effect of S. 84 SCPA; this intervention has not solved the lingering problem faced by litigant in enforcing monetary judgement against government. The decision limited the ratio of the case to instances in which the Attorney General is a party to the suit. There are cases against public officers in which the Attorney General is not a party. This decision need to be extended.

The rationale for seeking the consent of the Attorney General is to prevent the government from being embarrassed with enforcement of money judgements. If this is the case, S. 84 SCPA should be amended to state that monetary judgement against the judgement shall not be enforced unless the Attorney General is notified of the judgement. It is strongly contended that the notification of the judgement will suffice to prevent embarrassment and seeking the consent of the Attorney General in enforcing judgement against the government is asking for a legal impossibility.

Also, it is strongly advocated that judicial activism to set aside the provision of S. 84 SCPA is needed in the face of absence of the amendment of the provision. The power of courts to set aside the provision of an Act

²⁷ In page 139-140 of his book *Enforcement of Judgments* (2003), Afe Babalola, SAN argued copiously that S.84 of Sheriff and Civil Process Act is unconstitutional. He argued that the section is inconsistent with S.6, 6(b) of the 1999 constitution of Nigeria and that by virtue of S.1(3) of the constitution, S.84 of the Act is void. ³⁰ (2017) All FWLR Pt. 930, 442

of National Assembly is undoubtedly sacrosanct.²⁸ The provision of the Act can be set aside while a liberal judicial intervention will be made to enhance enforcement of monetary judgement against the government.

The provision of the SCPA states that Writ of FIFA cannot be deployed against the government and the same Act states that in enforcing monetary judgement against the government; the consent of the Attorney General must be sought and obtained. It appears that the provisions of the SCPA is a deliberate legislative mechanism to frustrate judgement creditors and to deprive them of the fruits of their victory. If a successful party cannot enforce judgement against government through the writ of FIFA and he cannot enforce judgement through garnishee proceeding without first obtaining the consent of the Attorney General; it is doubtful if there is any valid mechanism a successful party can deploy to realize the fruits of his victory against a public officer, especially where money is involved.

Enforcement of foreign judgments in Nigeria is highly technical, complex and problematic. It is one of the areas of law where judicial decisions are conflicting and unsettled. This has grave implications on investments and commerce as foreign investors will be discouraged in transacting international businesses with Nigerians knowing that enforcement of judgments accruing therefrom will be problematic.

The applicability of limitation laws to judgment enforcement in Nigeria is another injustice and burden to the judgment creditors. Limitation law extinguishes the rights of judgment creditors who are unable to enforce their judgments within six years from the date of the delivery of the judgment.

Another institutional bottleneck in the enforcement of judgments in Nigeria is the compromising attitudes of court officers who frustrate judgment enforcements by giving information to judgment debtors and by deliberately impeding the course of enforcement through administrative complexities. In practice, there have been instances in which court officials will inform judgment debtors of planned execution and the judgment debtors will hide or conceal their properties.

5.0. ENFORCEMENT OF FOREIGN JUDGMENTS

The applicable legal regime for the enforcement of foreign judgments in Nigeria includes: The Reciprocal Enforcement of Judgments Ordinance 1922(also often referred to as “the Reciprocal Enforcement of Judgments Act, Laws of the Federation of Nigeria 1958) (“the Ordinance”); the Foreign Judgments (Reciprocal Enforcement) Act 1960 (also often referred to as “the Foreign Judgments (Reciprocal Enforcement) Act; and common law.

²⁸ See *Mafimisebi v Ehuwa* (2007) 2 NWLR Pt. 1018 at 428 where it was held inter alia that a court can set aside a chieftaincy declaration and an Act of the National Assembly.

Enforcement of Foreign Judgment under the Act and the Ordinance

It has been the subject of controversy as to which of the statutes is in force, especially given the colonial heritage of the Ordinance. This is not unconnected with the fact that Part 1 of the Act deals with registration and enforcement of foreign judgments of superior courts, while Section 3 of the Act empowers the Minister of Justice to extend, by order, the application of the said Part 1 to any foreign country, including the United Kingdom, if the Minister is satisfied that judgments of superior courts of Nigeria will be accorded similar or substantial reciprocity in such foreign countries. It is important to state that the applicable regime for the enforcement of foreign judgments relates only to money judgments.

Under the Act, once an order is made under Section 3 in respect of any part of Her Majesty's dominions to which the Ordinance earlier applied, the Ordinance ceases to apply as from the date of the order. However, in the compilation of the Laws of the Federation of Nigeria, the Ordinance was omitted, suggesting that it has been impliedly repealed by the Act.

The Supreme Court of Nigeria has settled the lingering controversy surrounding the two statutes when it held in a number of cases – including *Macaulay v R.Z.B Osterreich Akienge sell Schaff of Austria*²⁹; *Grosvenor Casinos Ltd v Ghassan Halaoui*³⁰; and *VAB Petroleum Inc v Momah*³¹ – that the Act did not expressly repeal the Ordinance, and that both statutes remain existing laws; the Ordinance still applies to the United Kingdom and to parts of Her Majesty's dominions to which it was extended by proclamation under Section 5 of the Ordinance before the coming into force of the Act.

Enforcement under the Ordinance

The Ordinance applies to judgment obtained in the High Court in England or Ireland or in the Court of Session in Scotland, or a superior court of record in other countries/territories that form part of the Commonwealth as follows: Sierra Leone, Ghana, Gambia, Newfoundland, New South Wales, Victoria, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, St Lucia, St Vincent, and Trinidad and Tobago. The process for registration of foreign judgment under the Ordinance should be brought within 12 months from the date of the judgment or such longer period as may be allowed by the court.

All money judgments from the above-mentioned jurisdiction are registrable and enforceable subject to restrictions on registration contained in the Ordinance.

²⁹ Cap. F35, Laws of the Federation of Nigeria 2004

³⁰ (2003) LPELR – 1802 (SC)

³¹ (2009) 10 WLWR Pt 1149, 309

Enforcement under the Act

Under the Act, a judgment obtained in a foreign country may be registered and enforced in Nigeria where the Minister of Justice has made an order/proclamation extending the benefits of the Act to the registration and enforcement of foreign judgments to that country. However, the Minister has not made any such proclamation.

Ordinarily, a judgment registered under the Act may be registered within six years after the date of the last judgment given in the proceedings; however, because the Minister has not made a proclamation, the limitation period for registration is 12 months or such longer period as may be allowed by a superior court in Nigeria.

Under the Act, a foreign judgment obtained from a country in respect of which a proclamation has been made by the Minister can be registered and enforced in Nigeria if: It is a judgment of a superior court of the foreign court; it is final and conclusive between the parties; and the judgment orders the payment of a sum of money, not being a sum payable in respect of taxes or other charges of alike nature or in respect of a fine or other penalty.

Enforcement at Common Law

In addition to the procedure under the Ordinance and the Act, foreign judgments are also enforceable at common law. At common law, foreign judgment constitutes a debt that creates a fresh cause of action for the judgment creditor. The judgment creditor may therefore commence a fresh action in a Nigerian court claiming the reliefs granted to it by the foreign court. The fresh action is usually commenced by way of a Writ of Summons accompanied by an application for summary judgment.

RECOMMENDATIONS

The whole process of judgment enforcement should be liberalized and complexities and technicalities should be eliminated. Moreover, the procedure adopted for speedy trial of electoral cases by allotting time frame for the conduct of electoral matters in Nigeria from the tribunal to the Supreme Court should be adopted for all cases. A situation where it takes eternity to get hearing dates for cases at the Supreme Court is tantamount to legitimating injustice and it is often used as a ploy to discourage, outsmart and irritate judgment creditors. In addition, several cases like assault, affray, trespass, defamation, matrimonial cases; to mention just a few should end at the Court of Appeal as the final court. By so doing, Supreme Court will be decongested massively and hearing of cases will be faster as well as enforcement of judgments. The sharp practice of using stay of execution to frustrate judgment creditors by unscrupulous judgment debtors and their counsel should be discouraged by deploying heavy cost and professional disciplinary measures against legal practitioners who file frivolous applications bothering on stay of execution or injunction pending appeal. In some jurisdictions like the United Kingdom, if a legal practitioner wants to explore the right of appeal in areas where the law is settled; the court will hint him and warn him of the consequences of continuing with such

appeal. If he does, and the appeal turns out to be frivolous; disciplinary measures will be initiated against him.

S. 84 of the Sheriff and Civil Process Act is anachronistic and it is highly unfair to litigants who have monetary judgments against public officers. The requirement that such judgment creditors should seek and obtain the consent of the Attorney General should be amended. It should state that the Attorney General must be informed or notified of any monetary judgments against the government before such judgment can be enforced. This should be called pre-judgment enforcement notice. Once this is done and the Attorney General refuses to obey the judgment; the victorious party should be able to reap the fruits of his victory.

There is no need for limitation law on judgment enforcement in Nigeria. A litigant should be able to enforce his judgment whenever he desires. The authors strongly recommend that limitation law on judgment enforcement should be eradicated.

All the controversy surrounding enforcement of foreign judgments in Nigeria should be laid to rest. This will increase investors' confidence in the Nigerian legal system thereby promoting commerce. Nigerian government is the worst party that uses complexities in judgment enforcement to frustrate the courts and the citizens as the government both at the state and the federal level deliberately abuse procedural imperfection in the system to disobey court orders and judgments.³²

CONCLUSION

Enforcement of judgments in any country is a very key and fundamental aspect of the legal system and developmental process. Judgment enforcement should not be arduous, illusive and dicey. But it should be liberal, predictable and affordable.

The enforcement of judgments mechanisms in Nigeria requires legal and institutional reform so as to boost the confidence of litigants, investors and the citizenry in the country's judicial process.

A well-structured regime of judgment enforcement is a catalyst for development and promotion of the rule of law. Where government does not obey court orders and the citizenry disobey court judgments with impunity; that is a call for arbitrariness; chaos, violence and turbulence; to mention just a few.

³² In *Tewogbade & Sons Ltd v. Governor of Oyo State* (1991) 2 NWLR Pt. 171, 52; it was held thus: "It is a matter of grave concern for the Executive Governor of Oyo State to be seen to disregard lawful order decreed by a court of law. By treating the court order with levity and contempt, the government is tacitly exposing the court to ridicule and thereby eroding the confidence of the citizens in the judiciary. Such acts would necessarily have the consequence of replacing the rule of law with chaos and anarchy. It must be borne in mind this maxim: *NIHIL IN RRA REGNUM SUBDITOS BAGIS CONSERVAT IN TRANQUILI – MINISTRATIO* – Nothing more preserves in tranquility and concord those subjected to the government than due administration of the law.

Therefore, where judgment enforcement is liberal, predicable and ascertainable; development, rule of law, investments and peace will be promoted.