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Enforcement of Judgment in Nigeria and the “Multiplicity Challenge”



Introduction

Administration of justice is not concluded until the judgment creditor reaps and enjoys the benefits of judgment.¹ To ensure that judgments are enforced, Nigerian law, like the law in other jurisdictions, has a legal framework² that allows the use of several legal procedures³ for the enforcement of judgment creditor’s rights. An apparent lapse has appeared in the practice and regime of judgment enforcement in Nigeria over the years, which the current legal framework has not addressed. This apparent challenge borders on double-recovery and the simultaneous deployment of multiple judgment enforcement procedures to satisfy judgment debt(s). The kind of judgment contemplated in this paper is executory judgment.



This, which in the paper we will call the “**Multiplicity Challenge**”, takes various forms. Two of these forms are (i) the deployment of enforcement procedures by multiple judgment creditors in relation to the same property(s) and/or asset(s) and (ii) the commencement of enforcement procedures against multiple parties by the judgment creditor(s) before ascertaining where/with whom the property/asset of the judgment debtor is lying.

The existing legal framework does not provide for an efficient regime to guard against the incidences of abuse that may ensue on account of a judgment creditor deploying multiple enforcement procedures simultaneously. The state of the jurisprudence appears to be tilted towards the much-repeated mantra that “a judgment creditor is entitled to reap the fruits of his judgment”. Typically, not much emphasis is given to prevent the judgment creditor from reaping more than it has sown and/or harming too many trees in a bid to reap fruits, in a proverbial sense. It is the latter point that this paper seeks to address.

The (i) Judgment Creditor, (ii) Judgment Debtor and (iii) a third-party guarantor, garnishee or security provider (as the case may be) are typical parties to any judgment enforcement proceedings. The roles of the Judgment Creditor and the Judgment Debtor are clear being the “victor” and “vanquished”, so to speak, in the outcome of the adversarial proceedings. The third party may either be a bank or entity with whom the funds of a judgment debtor are deposited or a person or entity who has pledged their assets to secure an obligation in respect of which a judgment has been made against the Judgement Debtor.

¹ In *FBN Plc. v. Agbara* (2015) 8 NWLR (Pt. 140) 47, 2, the Court held that “the Court must as a duty remember that a judgment creditor is entitled to the full benefits and fruits of his judgment by the Court and nothing else”.

² (i) Sheriffs and Civil Processes Act, CAP S.6 LFN 2004 (the “SCPA”), (ii) Judgment Enforcement Rules, and (iii) Foreign Judgments (Enforcement Reciprocal) Act 1961, Cap F35, LFN 2004 and (iv) the Reciprocal Enforcement of Judgments Ordinance, 1958. These legislations are exclusively Federal.

³ Garnishee proceedings, Writ of *Fifa*, Judgment Summons, Writ of sequestration, Writ of Possession and Warrant of Possession

Legal framework for Enforcement of Judgment

The extant body of judgment enforcement legislation makes ample provisions on the procedure, temporal and other statutory requirements to be complied with by a judgment creditor upon a judgment being made in his favour. The relevant principles attendant to this are narrated sequentially below. There are more principles governing each mode of enforcement such as the *Writ of Fieri Facias*, Judgement Summons, Writ of Possession. However, expatiating these modes is not the aim this paper.

First, the law is that, the judgment of the Court becomes binding and should be enforced by the parties immediately it is passed, except a given time of enforcement is stipulated in the judgment.⁴

Second, enforcement procedures are resorted to and activated when the judgment debtor fails to comply with a judgment without demand, especially for executory judgments.⁵ Enforcement procedures may be brought after three days of a judgment being passed.⁶ In cases on land, a writ of possession is not to be issued until after the expiration of the day on which the Defendant is ordered to give possession of the land or 14 days after the judgment if no day is specified.⁷ It is worthy of note that the judgment creditor must fall call against the movable property of the judgment debtor and can only resort to the immovable property after obtaining the leave of the Court if the execution on the movable property does not settle the judgment debt.

Third, time-bar limitation also applies to judgment enforcement proceedings. Enforcement procedures can be commenced by the judgment creditor as of right, if brought within two years or six years for judgment *in personam* and *in rem* respectively. Otherwise, outside the prescribed time limits, the leave of court has to be resorted to. It is important to note that by virtue of Section 12 (2) of the Limitation Laws of Lagos State, “*an action will not be brought upon a judgment after the expiration of twelve (12) years from the date on which the judgement became enforceable*”. There are similar provisions in other states.⁸

The judgment enforcement laws do not address the wrongful deployment of judgment enforcement process or mechanisms, thereby affording a *lacuna* that allows for the perpetration of the Multiplicity Challenge. In fact, Nigeria does not have any central repository or virtual register of judgments or their enforcements. In case law⁹, the courts only adjudge as irregular or wrongful, non-compliance with certain procedural requirements in the course of judgment enforcement. This non-compliance include instances where the (i) leave of the Court is not sought when required, (ii) requirements of the rules and/or the Sheriff and Civil Processes

⁴ Section 287 (1-3) CFRN and *Government of Gongola State v. Tukur* (1989) 4 NWLR (Pt. 117) 592 at 608.

⁵ *Ibid.*

⁶ Order IV rule 1 (2) of the JER

⁷ Order IV rule 1(1) of the JER.

⁸ For instance, Section 11, Limitation Act.

⁹ See for example *Bhojosons Plc v. Kalio* (2000) FWLR 2356 (Pt. 14) 2376 D-F and *Macaulay v R.Z.B Osterreich Akiengesell Schaft of Austria* (2003) LPELR-1802(SC)

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Act are not complied with or (iii) execution is neither authorized nor justified by the writ of execution or by the Judgment.

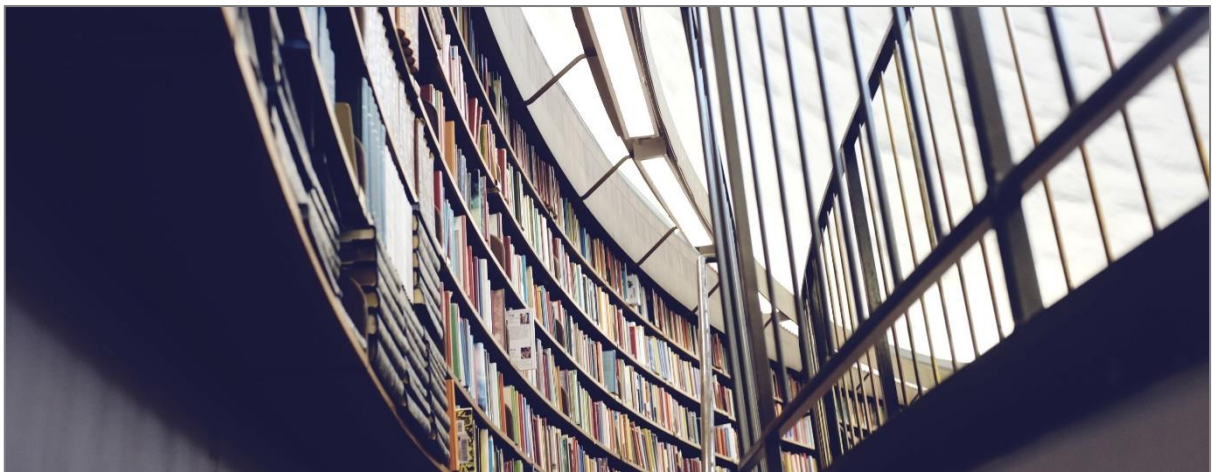
In practice, the issues appear to be much more complicated than simple non-adherence to form and procedure. The Multiplicity Challenge may appear in different forms (discussed below) and its operation in practice has posed a threat to the efficient administration of justice and judgment enforcement.

Multiplicity Challenge and the Various Forms

Employment of multiple procedures for judgment enforcement by the Judgment Creditor for a single judgment against a Judgment Debtor

It is good practice for a judgment creditor to adopt a single enforcement procedure at a time and not resort to another, except the former has proven ineffective or insufficient. However, this is not always the case in practice, considering that judgment creditors may be over-zealous and the Nigerian justice system embraces multiple enforcements. Some judgment creditor(s) in a bid to speedily recover the judgment debt adopt different enforcement procedures simultaneously and untidily.

For example, a judgment creditor being owed a judgment debt for monetary sums may set in motion simultaneously (i) garnishee proceedings against funds of the judgment debtor in the custody of a third party and (ii) enforcement processes (writ of *fifa*) against movable assets of a judgment debtor. Ordinarily, this practice is allowed and is regularly explored but it presents challenges and may be considered as amounting to abuse of court process.¹⁰



In the first instance, the problem of over-compensation or double compensation presents itself. A judgment creditor may obtain proceeds greater than the judgment sum he is entitled to in the process. Although, the Nigerian court may readily dismiss an action when it finds that the judgement debt has already been discovered, there are no provisions to nip such double

¹⁰ *Adegbanke v. Ojelabi et al.* (2021) LPELR-54992 (SC).

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recovery in the bud at its contemporaneous instance. In the second instance, the deployment of the court process in the manner done by the judgment creditor is indecorous and abusive.

Traditionally and typically, the Courts consider abuse of process in the context of pre-judgment proceedings¹¹ and not usually in the post judgment context considered in this paper. Notwithstanding that, the categories of what may be considered as abuse of court process are open-ended¹² and the argument can still be made. The Supreme Court in *Saraki v. Kotoye*¹³ held that “*the concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions*”. Imaginably, but incredulously, Order IV rule 11 in a way, may support the employment of multiple enforcement procedures if not progressively interpreted. It provides that “*process may be issued concurrently in one or more divisions or districts, but the costs of more than one process or execution shall not be allowed against the judgment debtor except by order of the court*”.

Institution of enforcement procedures by multiple judgment creditors in relation to the same property and/or asset

This occurs when more than one judgment creditor has obtained orders absolute against a particular account/asset of the judgment debtor. There are provisions of the statute as to how this tussle will be resolved and as to which of the orders will take priority. Section 32 of the SCPA establishes the priority doctrine¹⁴, to the effect that where there are writs by more than one person against a property, the order of priority shall be determined by the respective times the writ holders applied to the Court registrars for the issuance.

In more complicated cases, an interpleader by sheriff summons may be issued in respect of the parties to resolve who the judgment sum/property should accrue to. Upon the issuance of the summons, any subsequent action pending in relation to the execution will be stayed.¹⁵ These provisions do not cater to a scenario where the proceeds from the sale of the property or the judgment sum will exceed the judgment debt. It is expected that the first judgment creditor will take the benefit and pass it to the subsequent judgment creditor that comes next in term of priority.

The Judgment Creditor’s commencement of garnishee proceedings against multiple parties to ascertain the location of the judgment debtor assets

This phenomenon is the typical situation in a majority of garnishee proceedings in Nigeria, where a majority of all commercial banks are served, just to discover that the judgment debtor only has a bank account in a few or even only one of the served banks. This practice activates

¹¹ Ibid; the SC held that “there is said to be an abuse of the process of the Court when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, such as instituting a multiplicity of action on the same subject matter, against the same opponent on the same issues..”. however, due to the multi-territorial nature of our courts and the lack of a good database, the abuse of court process may not be readily flagged except raised and argued by the other party.

¹² *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156, 188.

¹³ Ibid

¹⁴ This principle is traced to the Latin maxim; *Qui Prior Est Tempore, Potior Est Jure*; where there are two equities the first in time prevails.

¹⁵ Section 34, SCPA.

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the judicial machinery against the different banks for no just and reasonable cause.¹⁶ As being practised in Nigeria, garnishee proceedings can be inefficient, a waste of resources (for persons who have no business being garnished in the first place) and a waste of judicial resources.

Conclusions: Some Recommendations

The Multiplicity Challenge poses a major challenge in the efficient administration of justice in Nigeria. Until it is solved by responsive legislation, the issues highlighted in the paper will persist as they now do. The following recommendations are suggested to aid efficient administration of justice in the context of judgment enforcement.



The Need for a Centralized Registry for Judgment Enforcement in Federal and State Courts

This office is existent in some jurisdictions. For instance, in the United Kingdom, there is the Enforcement of Judgments Office,¹⁷ which is a centralized unit for enforcing civil judgments related to the recovery of money, goods and property of the courts¹⁸. The mandate of this registry will be to keep up-to-date data on enforcement (parties and assets related thereto) and keep tabs on the enforcement process and administration in the respective courts. It is germane for such centralized judgment to be created in Nigeria, such judgement should electronic and accessible to the public (especially interested parties) with affordable fees. The extant registries (sheriff offices) in Nigerian federal and state courts do not perform this salient function.

The deployment of a data tracking system (“DTS”) in the Centralized Registry

A DTS will provide an automated platform for case enforcement management. The DTS should be domiciled in the centralized registry discussed in the immediately preceding paragraph. The DTS is automated to keep track of proceedings and assets in respect of judgment enforcement. Enforcement proceedings instituted will be registered on the DTS as well as assets being proceeded against this will facilitate the nipping of any Multiplicity Challenge in the bud.

¹⁶ Dr. M.A. Banire, SAN “Emerging Issue in Garnishee Proceedings in Nigeria” posted on the mabandassociates.com website accessed on 1st March, 2021.

¹⁷ <https://www.justice-ni.gov.uk/articles/enforcement-judgments-office>.

¹⁸ Ibid.

The BVN Opportunity

On February 14, 2014, the Central Bank of Nigeria in collaboration with all banks launched a centralized biometric identification system for the banking industry known as the "Bank Verification Number" (“BVN”) System. The purpose of the exercise is to use biometric information as a means of first identifying and verifying all individuals that maintain or operate accounts in any Nigerian bank.

Upon registration, all the accounts of the business entity become centralized and can easily be traced using the unique BVN. The use of BVN to trace judgment debtor bank accounts will lend itself as a useful tool for judgment enforcement purposes. This will also curb the incessant issue with compelling the attendance of several banks or persons to which the judgment debtor does not have an account or monies with.

The potential legal issue that may arise from adopting the BVN procedure in enforcement proceedings is that the information may be the personal data of the individual involved such that any disclosure of it may be a breach of privacy and personal data rights. We do not, however, see such argument as being viable in the circumstances given that the disclosure in such context could be adjudged as being made in compliance with a court order. Article 2.2 (c) of the NDPR lends credence to this position. It provides that personal data processing shall be lawful if “*processing is necessary for compliance with a legal obligation to which the Controller is subject*”. The legal obligation in this case is imposed by the judgement.

Other recommendations include the Imposition of realistic costs against over-zealous creditors that activate multiple enforcement proceedings unjustly, a pragmatic judicial approach towards enforcement proceedings and collaborative regulation of enforcement procedures.

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