

AN OVERVIEW OF GARNISHEE PROCEEDINGS IN NIGERIA

**BY
EMMANUEL ANIEKPENO**

ABSTRACT

The aim of this article in itself is to demystify garnishee proceedings as a form of enforcement of monetary judgments bearing in mind recent judicial interpretations and pronouncements on the subject matter. Garnishees like all legal doctrines are subject to technicalities and loopholes which are from time to time the subject of legal debates. Garnishees in particular are plagued by certain legal issues such as the Position of the Judgment debtor as a necessary party in the proceedings, the issue of service as it relates to jurisdiction etc. These technicalities have birthed the combined effect of making what would ordinarily be a straightforward process a rather herculean task.

INTRODUCTION

What is a Garnishee Order?

A garnishee order is one of the options open to a Judgment creditor to enforce a judgment that has been made in its favor. It is in itself a rather common form of enforcing a judgment debt and is solely used to enforce monetary judgments against a Debtor to recover money. In a Garnishee proceeding, the court simply directs a third party that is in possession of monies belonging to the judgment debtor to disclose the sum in its possession and pay same to the judgment creditor to the extent of the Judgment Debt. This third party is called a 'garnishee'. Thus there are three parties in a garnishee proceeding, namely¹.

1. **THE JUDGMENT CREDITOR** – The Beneficiary of a Judgment. A party who is owed a debt by means of a judicial pronouncement.
2. **THE JUDGMENT DEBTOR** – This is a Party who has been directed by way of a Judgment to deliver a Judgment Debt to the Judgment Creditor and is yet to comply with the

order of the Court. The status of a judgment debtor as a necessary party in a garnishee proceeding as been confirmed by the very recent case of **Jenkins Duvie Giane Gwede v Delta state house of Assembly**² where the Supreme Court held that upon service, the Judgment debtor becomes a necessary party and can be heard before the decree is made absolute this is in direct contrast with the previously held position that the judgment debtor is merely a nominal party and is present only to be seen and not heard in the suit (see. **UBA v. Ekanem**³).

3. **GARNISHEES** - Olagunju JCA in **STB Ltd v. Contract Resources (Nig) Ltd**⁴, stated that a Garnishee is “a third party who is indebted to the Judgment Debtor or having custody of his money and who at the instance of the judgment creditor is being called upon to the judgment debt from his indebtedness to the judgment debtor or from the credit of the judgment debtor in his account with the third party.” Garnishees are usually banks, financial institutions, companies, ordinary debtors of the judgment debtor, trustees, employers etc.

The Garnishee proceeding is in itself a two-pronged judicial process of execution or enforcement of monetary judgment whereby money belonging to a judgment debtor, in the possession of a third party is attached or seized through a court order by a judgment creditor, the 'Garnisher' or 'Garnishor' in satisfaction of a judgment sum or debt.

¹ PPMC Ltd. v. Delphi Petroleum inc. [2005] 8 NWLR (pt. 92) 458 at 484, per salami, JCA

² (Sc/595/2018) `

³ (2010) 6 NWLR pt 1990 pg 207

⁴ (2001) 6 NWLR (pt 708) 115

The court in *Fidelity Bank Plc. v Francis Okwuowulu*⁵ defined garnishee proceedings, as a means of collecting a monetary judgment against a judgment debtor by ordering a third party to pay money, otherwise owed to the judgment debtor, directly to the judgment creditor. It is a method of enforcement.

Although garnishee proceedings may flow from the judgment of the court of first instance, where pronouncement was made as to the legality of the debt; it is by nature a new and separate proceedings, independent from the original suit wherein it originated from; Hence, the court in the original suit becomes **Functus officio** as at such it is "sui generis", and different from other Court proceedings.

The extant laws regulating Garnishee proceedings in Nigeria are the Rules of Courts, case laws, the **Sheriff and Civil Process Act, Cap S6 Laws of the Federation of Nigeria, 2004 ("SCPA")** and the **Judgment (Enforcement) Rules ("JER") made pursuant to Section 94 of the SCPA.**

PROCEDURE FOR GARNISHEE PROCEEDINGS IN NIGERIA

The procedure for the attachment of debts by garnishee proceedings in Nigeria is provided for under Sections 83-92 of the Sheriffs and Civil Process Act, Cap S6, Laws of the Federation 2004 ("the Act").

Section - 83 (1) & (2) SCPA, specifically states the procedure for the commencement of Garnishee proceedings follows:

"83 (1) *The court may, upon the ex parte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the*

applicant or his legal practitioner that judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to such debtor and is within the State, order that debts owing from such third person, hereinafter called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid".

The foregoing section makes it such that Garnishee proceedings are done in two different stages. The first stage is for the garnishee order nisi, while the second stage is for the garnishee order absolute.

(2)At least fourteen days before the day of the hearing, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor"

This section is to the effect that service of a garnishee proceeding on both the judgment debtor and the garnishee is mandatory, and failure to serve becomes a fundamental omission which goes to the jurisdiction of the court to adjudicate the proceedings. See *Tubonemi v Dikko*⁶.

ORDER NISI

A decree nisi or rule nisi is a court order that will come into force at a future date unless a particular condition (which may vary depending on the nature of the case) is met. Unless the condition is met, the ruling becomes a decree absolute and is binding. In garnishee proceedings, the order nisi directs the garnishee to appear in Court on a

⁵ (2013) 6NWLR pt 1349 pg 197

⁶ (2006) 5NWLR pt. 974 pg 565

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.

The application for the garnishee order nisi is made pursuant to section 83(1) of the Sheriffs and Civil processes act which provides the manner in which the order should be made and the conditions that must be present for the order to be made absolute. According to the section above the order is to be made ex-parte and for the Court to grant the application, the Applicant in his affidavit must establish the following:

- That there is a valid and subsisting judgment debt owed to him by the judgment debtor, where the application is not being made in the same court that granted the original judgment then a copy of the judgment should be attached to the application.

- That the judgment sum remains unpaid; the time frame for payments are usually stipulated by the court in its judgment⁷. However where no time frame is specified by the court then a period of three (3) days must expire before any sort of enforcement is commenced according to Order 4 Rule 1(2) Judgment (Enforcement) Rules, see also the case of Olatunji v. Owena Bank Plc⁸.

- That there is a third party (the garnishee) in existence within the jurisdiction of the court who owes or holds monies belonging to the judgment debtor.

- That the judgment debt in the hands of the third party (the Garnishee) be paid directly to the judgment creditor unless there is an explanation from the Garnishee why the order nisi should not be made absolute.

EFFECTS OF THE ORDER NISI

Once a third party being a garnishee is served with a garnishee order nisi, the effect is such that the judgment debtor is barred from having access to such monies until the determination of the garnishee proceedings. In the case of a bank acting as a garnishee the bank's right to pay on cheques or any sort of disbursement/withdrawal is suspended, and the bank at this point is free to set off the judgment debtor's credit balance against the actual indebtedness to the bank, to determine the net balance properly owed for the purpose of the proceedings.

It is pertinent to note that the Order nisi does not grant the garnishee the ability to transfer any funds to the judgment creditor as of yet, until the order is made absolute.

ORDER ABSOLUTE

The name given to a final and conclusive court order after the condition of an interim or intervening order (decree nisi) is met. In a garnishee proceeding, the order absolute is made at the second stage on the return date hitherto given at the first stage if the Garnishee fails to attend Court, or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may subject to certain limitations, make an order absolute under which the garnishee will be 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 garnishee.

Section 87 of the sheriffs and civil processes act states thus

“If the garnishee appears and disputes his liability the court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in any proceedings may be

⁷ ACB v. Ehiemua (1978) 2 SC 73 at 76

⁸ (2008) 8 NWLR (pt 1090) 668 at 679 - 680

tried or determined, or may refer the matter to a referee”

Thus ensuring that in certain instances depending on the facts of that particular case a garnishee may appear and state in affidavit to show cause, why the order should not be made absolute. The garnishee May cite any number of reasons like the absence of any funds in its custody belonging to the judgment debtor or that there is an already existing court order regarding such funds etc.

The onus placed on a garnishee would only be discharged if he successfully establishes that the account referred to in the order nisi does not exist, or the garnishee does not have any funds of the judgment debtor in his custody and any number of situational reasons that may arise.

The effect of an order absolute is such that the garnishee proceedings has been fully and finally determined and the court becomes **Functus officio** and has at such any further arguments that may arise based on the proceeding shall be dealt with on appeal.

CONCLUSION

Perhaps in attempting to provide a synopsis of what a garnishee proceeding is, this article may have presented the illusion that it is a cut and dry matter, it is however Germaine to note that the very nature of the proceedings itself begets a lot of issues both in legal technicality and application, recent cases as highlighted in the body of article has seen the courts correct itself on previous errors of law and whilst lawyers are urged to consider the recent decisions of the court in garnishee proceedings other outright issues of application still abound.

Issues such as the repetitive invitations of banks to continuously appear in garnishee matters that they originally should not be a part of being a key issue an issue in which I

verily believe that until a certain and unequivocal method of ascertaining what banks hold the funds of a judgment debtor and to what extent then continuous representations of the banks are mandatory to protect their interest as garnishees in the proceedings. Laws must evolve and change with the society wherein it dwells for it to better serve the needs of its people this is the key attribute of all all good laws and the Nigerian Laws are no exception, and whilst we must give time for the laws to adjust to cover these shortcomings Lawyers must play their role in ensuring that this seemingly straightforward process is not belabored by a litany of technicalities.



Mfonobong Unanaowo

Head, Corporate Strategy & Commercial LP

mu.unanaowo@manifieldsolicitors.com



Emmanuel Aniekpeno

Associate - Tax Expert

emmanuel.aniekepeno@manifieldsolicitors.com

Office Locations

Lagos Office

Plot 7, 10,
Omorinre Johnson Street
Lekki Phase 1
Lagos

Benin City

Akenzua Street
(2nd floor)
Off Plymouth Road
Benin City, Edo state

Abuja Office

Plot 2669 Aguiyi Ironsi Street
Maitama
Abuja

+234 8027405535

+234 8104242598

+234 9093857000

immanioj@manifieldsolicitors.com

manioj@hotmail.com

immaniohio@yahoo.com