THE ENFORCEMENT OF COURT JUDGMENTS AND ORDERS IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY, ABUJA: PROCEDURES AND CHALLENGES

BY

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DECLARATION

I declare that the work in this Dissertation titled "The Enforcement of Court Judgment and Order in the High Court of the Federal Capital Territory, Abuja, Procedure and Challenges, has been carried out by me in the Department of Public law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution.

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CERTIFICATION

This Dissertation titled: The Enforcement of Court Judgments and Orders in The High Court of the Federal Capital Territory, Abuja, Procedure and Challenges by Jummai HABIBU meets the regulations governing the award of the degree of Master of Laws-LLM of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This dissertation is dedicated to my husband Sani Muhammed for his moral and financial support in making this dissertation possible.

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ABSTRACT

This dissertation titled "The Enforcement of Court Judgments and Orders in the High Court of the Federal Capital Territory, Abuja, Procedure and Challenges." The area of interest is the enforcement of judgments and court orders in the Federal Capital Territory, Abuja. It is an established fact that, the High Court of the Federal Capital Territory established an enforcement unit which is now a Department mainly for the enforcement of court judgments and orders. This, give rise to complete and successful enforcement in the Territory. The centralization of the enforcement Department for the enforcement of all judgments and orders of the High Court Federal Capital Territory should be considered in order to obtain an easy and cheap enforcement for the judgment creditors. The problem perceived in this research includes; a) Centralization of the enforcement department at Maitama, which is the main Headquarters of the High Court of the Federal Capital Territory, Abuja. b) Unnecessary delay due to complex bureaucratic procedure. c) High cost of enforcement due to lack of adequate facilities like mobility for the enforcement officers, crane, toying van and truck for the conveyance of attached properties to the warehouse. d) Corruption by the enforcement officers and improper advice by lawyers to their clients (judgment debtor). e) High risk of life is involved. f) lesser punishment provided by law for obstructing court judgments and orders (fine of not more than 100 naira). g) Non publication for sale of attached property and sale to the highest bidder. The objective of this work is to examine the challenges associated with enforcement of judgments and court orders in the Federal Capital Territory, Abuja, to point out the reasons behind the non enforceability of some judgments and court orders and the way out, and to analyze the procedures for the enforcement of judgments and orders, in the High Court of the Federal Capital Territory, Abuja and challenges. The research methodology adopted in this research is the doctrinal method also known as library oriented research wherein recourse are made to statutes, case law, conventions, textbooks, journals, literature, e.t.c. Teleological research is also adopted due to work experience. Findings, however, revealed that, the major challenges associated with enforcement of judgment and court orders in the High Court of Abuja: a) the centralization of the enforcement Department at the main Headquarter, Maitama, Abuja. b) unnecessary delay that gives room for the judgments debtor to frustrate the enforcement by filing motion for stay of execution, interpleader summons or go on appeal. c) lesser punishment provided by law for obstructing court judgments and orders. d) Inadequate facilities. e) corruption by enforcement officers and lawyers. f) High risk of life. g) Non publication of the sale of attached property and sale to the highest bidder. It is recommended that; a) the enforcement Department should be decentralized. b) Judgments and court orders should be speedily enforced without any delay. c) The provision of the Act that provide punishment for obstructing court judgments and order should be amended. d) There should be provision for adequate facilities to carry out the enforcement. e) Provision for training for the enforcement officers by the High Court and lawyers by the Nigerian Bar Association (NBA). f) Insurance should be provided for the enforcement officers because of the high risks of life involve. g) Sale of attached property should be publicized and to the highest bidder.

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LIST OF ABBREVIATIONS

A.C.	Appeal Cases
Ch.D.	Chancery Division
Co. Ltd.	Company Limited
et.al	And All
Ibid	Ibidem
K.B.	Kings Bench
L.J.	Law Journal
L.L.R.	Lagos Law Report
N.L.R.	Nigeria Law Report
N.M.L.R.	Nigeria Monthly Law Report
N.N.L.R.	Northern Nigeria Law Report
N.W.L.R.	Nigeria Weekly Law Report
P.	Page
Para.	Paragraph
Pt.	part
Q.B.D.	Queens Bench Division

S.C.	Supreme Court
S.C.N.J.	Supreme Court of Nigeria Judgment
W.A.C.A.	West African Court of Appeal

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

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

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

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

[1] . (1998) 12 SCNJ (pt.1) a 13; Afolayan A.F. and Okorie P.C. (2007) *Modern Civil Procedure Law*, Dee-Sage Nigeria Ltd,Lagos, P.290.
[2] . *Tukur v. Government of Gongola state* (1989) 4NWLR 592 at 608. https://topeadebayollp.
[3] . *Alhaji v. Kessler* (1935) 12 NLR 35, also *ChikeAraAkume v. A.G. Anambra State* (1977) 5Sc 161 at 177.

obtaining for his satisfaction, compensation, restitution, performance or compliance with what the court has granted by way of remedy or relief. The process of enforcement is broadly referred to as execution. Lord Denning aptly summarized the process, that:

Execution simply means the process for enforcing or giving effect to the judgment of the court. In case when execution was had by means of common law writ, such as *FieriFecias*. It was legal execution when it was had by means of an equitable remedy, such as the appointment of a Receiver, then it was equitable execution because it was the process for enforcing or giving effect to the judgment of the court.[4]

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

[4] . *Re Overseas Aviation Engineering (GB) Ltd.* (1963) Ch. 24 at pp.39,40. Babalola A. (2003) *Enforcement of Judgments*. Obafemi Awolowo University Press Ltd. Ile-Ife, Nigeria, p.2.
[5]*. Ibrahim v. Emein* (1996)2N.W.L.R. (Pt.430) 322at 339.
[6] . The Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 6 (6) (b).

These study will examine the enforcement and execution of judgments and court orders in the High Court of the Federal Capital Territory, Abuja (herein as F.C.T High court, Abuja): procedure and challenges. In order to achieve the primary purpose of this study the research will also examine the procedures and measures adopted by the Abuja High Court to ensure a successful enforcement of court judgments and orders in the territory.

1.2 Statement of Problems of the Research

The question here is whether the establishment of Enforcement Department has any effect in the successful enforcement of court judgments and orders, in the High Court of the Federal Capital Territory, Abuja. The problem of enforcement of judgment and court order in the legal profession is that, some people thought, it can never be brought into reality. But, with the methods and procedure laid down by the Sheriffs and Civil Process Act and Judgment Enforcement Rules, and with the establishments of the Enforcement Department in the High Court of the Federal Capital Territory (F.C.T. High Court) Abuja, despite the difficulties facing the enforcement of judgment, most judgments and court orders, are successfully enforced by the High Court of the Federal Capital Territory, Abuja.

Prior to the establishment of Enforcement Department in the High Court of the Federal Capital Territory Abuja, enforcement of judgment and court order were sabotage and enforced by incompetent Registrars and bailiffs of the court that gave the judgment. The Registrars and bailiffs, sometimes connived with the judgment debtor (person against whom judgment was given) to delay and frustrate the judgment granted in favor of the judgment creditor.[7] The judgment debtor may apply for motion for stay of execution that will automatically suspend the enforcement until after the determination of the motion for the stay of the execution. This

[7]. Sheriffs and Civil Process Act, Cap.S6, Law of the Federation of Nigeria, 2004, Section 40(1).

application gives room for the judgment debtor to hide or move his property out of jurisdiction, and prevent the judgment creditor from attaching the property of the judgment debtor and realization of the judgment sum. The procedure laid down by the Sheriffs and Civil Process Act, are not fully followed. Most court judgment and order are either unsuccessfully or partly enforced. The provision of lesser punishment by the Judgment (Enforcement) Rules, that any bailiff who fails to comply with the provisions of the Rules, shall be liable to a fine of 100 naira or imprisonment for three month or both do not make any impact on any bailiff or registrar that obstruct the process of enforcement.[8]

With the establishment of the centralized Enforcement unit now, the Enforcement Department in 2010, in the High Court of the Federal Capital Territory, main headquarter, Maitama, Abuja, for the enforcement of all High Court judgment and order, enforcement of court judgments are carried out by trained bailiffs and police officers stationed by the court. The procedure laid down by the Sheriffs and Civil Process Act are fully complied with. Centralization of the Enforcement Department makes enforcement of High Courts that are outside the city of Abuja (Karu, Kuje, Gwagwalada, Abaji, Kwali, Zuba, and Bwari), more difficult and expensive due to far distance of the court and the Enforcement Department at Maitama. The provision laid down by the Rules, is that, the judgment creditor bears the cost and expenses for enforcement, the cost can be over and above the sum in the judgment,[9] The judgment creditor finds it difficult and expensive in mobilizing crane and toying van where the attachment involve heavy property (cars or industrial machines) of the judgment debtor.

[8] . Judgment (Enforcement) Rules, 2004, Order 1, Rule 16.
[9] . Ibid, Order 2, Rule 32,

Also, the mobilization of the Registrar of the court by the judgment creditor in conveying his file for enforcement, to the Deputy Sheriff (the Chief Registrar of the High Court of Federal Capital Territory Abuja).The stress of going to the enforcement Department to make arrangement for enforcement of such judgment, by the judgment creditor is one of the main problem for enforcing Court judgments in the High Court of Federal Capital Territory, Abuja.

Judgment debtor or his counsel who felt aggrieved by the judgment against him, should make an application for motion for stay of execution immediately after judgment.[10]This suspends the enforcement of the judgment, until after the determination of the application. Some judgment debtors or their counsels (new wig or corporate lawyers), neglect to act immediately in making an application for stay of execution, or may make the application but neglect to serve the Deputy Sheriff or judgment creditor or his counsel. Some neglect to serve the court that issue the writ of attachment were the application is made directly to a higher court or court of appeal.[11]Sometimes judgment debtors serve their motion for stay of execution after the judgment creditor spent his money in carrying out the enforcement, here, the judgment creditor is put in a position that he cannot get his money back since attachment has already been made and payment to those in charge of moving the attached property to the court ware house has been made by the judgment creditor.

Enforcement of judgment involve risk of life and also the need for the provisions of some utilities (crane, toying van, truck and mobility for the enforcement officers) for cheap and easy conveyance of attached property of the judgment debtor to the warehouse and successful achievement of enforcement of money judgments. Most judgment debtors turn out to be violent when attaching their property, due to, ignorance of the law or improper advice by their counsel to

[10] . *Union Bank Nigeria Ltd v. Emole* (1991) 9 N.W.L.R.(Pt 213) p.74.
[11]. *Chief Olowumi and Ors. v. Mohammed and Ors*.(1991)4 N.W.L.R.(Pt.186)516.

comply with the judgment of the court. Where the judgment is against high dignitaries, Government, or Banks, police and military officers, they use their position and power in the society, to withdraw the securities (police officers) attached to the enforcement Department, leaving the enforcement officers life at risk. Without securities, enforcement of judgment cannot be enforced and must be suspended. Judgment debtors obstruct court judgment because there is no serious punishment provided by law. The punishment provided by law is, fine not exceeding 100 naira[12]

Some Property attached during enforcement of judgment by writ of attachment, are abandon because there are no buyers to buy them. Some attached property of the judgment debtor are over stayed at the court warehouse because the matter is on appeal, therefore, enforcement is suspended until final determination of the appeal,[13] If the appeal is in favor of the judgment creditor, the judgment creditor will not be able to realize his judgment sum when the property is sold because of the depreciation in value of the attached property. If the appeal is in favor of the judgment debtor, the judgment debtor will not be able to get his property in the same position as when it was attached because the property are destroyed by sun and rain. Especially were the property attached are vehicles or industrial machines. The warehouse get congested, putting the enforcement officers in a difficult position to find space for keeping other attached property after enforcement.

1.3 Aim and Objectives of the Study

The aim and objectives of this dissertation is to lay down the existing legal provisions for the enforcement of civil judgments and court orders and to examine the effectiveness and efficiency

[12]. Sheriffs and Civil Process Act, Section 28.

[13] . *Cheshe v. Nicon (*1998)12, N.W.L.R. (Pt576)196.

of the judgment enforcement procedure in the Federal Capital Territory, Abuja with the aim to determining whether the new procedure has brought any improvement to the enforcement of judgment and court order in the Federal Capital Territory. To identify and evaluate the fundamental problems, difficulties and challenges, facing the enforcement of court judgments and orders against the individual, Governments, Banks and high dignitaries and the way out, so that the judiciary will be given its credibility so that people will have hope and confidence on the judiciary.

1.4 Justification of the Study

This study is justified in view of the tremendous difficulties associated with initiation of enforcement of court judgment and court order hence, the need to examine the efficacy of the legislation and institutional frame works. There is need to provide effective methods of reducing, if not completely eliminating hardship to the judgment creditor who is ready to reap the fruit of his judgment after the long litigation he has went through. The study will no doubt be beneficial to judges, government, legislators and to the entire public.

1.5 Scope and Limitations of the Study

The scope of this research work deals essentially with the provisions of our organic law the Constitution of Federal Republic of Nigeria, 1999, the Sheriffs and Civil Process Act and Judgment Enforcement Rules 2004, which have elaborately discussed the enforcement of court judgment and order, Foreign Judgments (Reciprocal Enforcement) Act, 2004,High Court of the Federal Capital Territory Abuja Civil Procedure Rules 2004, among other legislation, as they relate to the subject of enforcement of court judgment and order in Abuja High Court.

However, efforts will be made to examine only the Enforcement of Civil Judgements and Court Orders in the High Court of the Federal Capital Territory. The emphasis here will be on the effects and influence of such development on the Abuja High Court.

An appraisal will also be made on the philosophy of enforcement of court judgment and order with a view to bringing out various perspectives on the concept of enforcement in the society. The research also covers the examination of the concept of enforcement with issues as the procedure, and effects of enforcement in Abuja High court.

1.6 Research Methodology

The research methodology employed in this work is essentially doctrinal and Teleological research. Reliance shall be placed on primary and secondary, legal as well as none, Legal materials and sources from the libraries, research centers, internet and relevant courts. Personal experience of enforcing Civil Judgement and Orders in the High Court of the Federal Capital territory, Abuja will also be very relevant. This Teleological approach is undertaken in order to complement the doctrinal method of research highlighted above.

1.7 Literature Review

The literature consulted includes text books, law reports, documents and commentaries arising there from. Afolayan el (2007)[14] in their book attempts some definition of key concept such as judgment, declaratory judgment and executory judgment, judgment creditor and judgment debtor they also went ahead to differentiate between execution and enforcement. The writers while examining enforcement of judgment in their book, only brought out the position of the law in enforcing court judgment, even though enforcement of judgment must be carried out according

[14] Afolayan A.F. and Okorie P.C. (2007). *Modern Civil Procedure Law.* Dee-Sage Nigeria Ltd, Lagos.

to the provisions of the Act. The writers did not bring out the practical aspect of enforcing court judgment and order and also the practice direction applied in some state example the FCT High Court which this thesis will dwell in.

This work will attempt to fill the gaps by making reference to the High court Rules of FCT, Abuja and some judicial authorities in the federal capital territory. The writers in their book also mention the methods of executing judgment without fully discussing the practical procedure and processes use in the enforcement of the judgment. The book also lack the position of the law before and the judicial review of the petition Act in executing judgment against the government and foreign judgment, which in these research will be fully discussed.

Nwadialo (2000)[15] in his book, discussed the concept, meaning, procedure and the position of the law for the enforcement of money judgment, judgment other than money judgment and enforcement in the division and outside division, within and outside jurisdiction, within and outside Nigeria. But there is need for the whole world to know the procedures apply in the Nigeria's states especially in the FCT High Court Abuja which this research would dwell in, and also will bring out the problems and difficulties faced in enforcing monetary judgments and enforcement of court judgment and order within and outside Nigeria.

Afe Babalola (2003)[16] wrote immensely on the enforcement of judgment, and the etiology and philosophical perspectives on the enforcement of judgment against the government with reference to our present situation. Some cases he made reference to Oyo state, but this research work will go ahead to bring out the procedure applied in the FCT High Court Abuja to show the

[15] Nwadialo F. (2000) *Civil Procedure in Nigeria.* University of Lagos Press, Lagos, Nigeria.
[16] Babalola A. (2003) *Enforcement of Judgments.* Obafemi Awolowo University press ltd, Ile-Ife, Nigeria.

entire world the realization of enforcement of court judgment, which so many Nigerians are not well aware of

Adebayo (2011),[17] gave an analysis of enforcement of judgments and court orders in the Nigeria legal system in summary without bringing out laws and procedure, the problems and difficulties facing the enforcement of judgment in Nigeria which is one of the main reasons for this research, especially, when the judgment is against the government or security agent for example, the ministries, police and the military. This research also brings out some gaps in our judicial provisions and also in the Act and Rules and the need for practice direction of some aspect of enforcing court judgment and order.

Efevwerhan (2007),[18] gave a brief discussion of enforcement of judgment, by bringing out the mode of enforcement, misconduct of judgment debtor, land judgment, without giving an elaborate procedure for the enforcement of such judgment. He also made mention that, more often than not, judgment debtors do not willingly comply with the terms of judgment, which is very true. But in practice, you find out that there are some judgment debtors who are not aware of the judgment against them, due to failure by their lawyers to notify them, or after knowing the judgment against them, pay the judgment sum to their lawyer for him to remit the sum to the judgment creditor and the lawyer will not do so. This research delves into the problems and difficulties faced by judgment debtors whenever there is judgment against them.

[17] *An Enforcement of Judgments and Court Orders In the Nigerian Legal system*. Retrieved June, 19, 2012 from Http://ssrn.standford.edu.com 10:45 AM.

[18] Efevwerhan D.I. (2007) *Principle of Civil Procedure in Nigeria*, Chenglo, Nigeria.

Amadi J. (2014)[19] in his book, brings out the position of the law and procedure in enforcing court judgments and order in Nigeria. The basic problems and changes associated with the enforcement of judgments are missing in which this dissertation will fully discuss.

Obi Okoye A. (1983)[20] in his essay, write the procedure for enforcement of court judgment but only discuss the common law position on the procedure for the enforcement of court judgments against the Governments but did not mention the provisions of the 1999 Constitution as amended that eliminates the common law position. In this dissertation the constitutional provision will be fully discussed. Also Justice Oludotun A.O.(2013),[21] in his book, states only the laws no procedure.

The work of the learned writers are very relevant and useful in the preparation of this research as it touches so many basics points which this research also delves into. Notwithstanding the contribution as made by the aforementioned writers, the proposed research improves on the existing literature and will provide a more up to date analysis and conclusions.

1.8 Organizational Layout

This dissertation deploys the methods and procedure for the enforcement of court judgment in the High court of the Federal capital Territory, Abuja and the problems, challenges and difficulties facing the enforcement of court judgment and order due to lesser punishment provided by the Sherriff and Civil process Act for obstruction of court judgment or order, inadequate facilities and the decentralization of the Enforcement Department. This study also

[19] Jerr A. (2014) *Modern Civil Procedure Laws and Practice*, Vol. II Pearl, Portharcourt, Nigeria.
[20] Okoye A. O. (1983) *Essay On Civil Proceedings* Vol.1,Elmina Books Ltd., Enugu, Nigeria.
[21] Oludotun A. O. (2013) *CIVIL LITIGATION A Quick Reference Guide to Substantive Law and Procedure*, Supreme Court of Nigeria.

pays closer attention in bringing out the reasons why some judgment debtors or their counsels obstruct court judgment and bring out the solution such problems. The study also contend that Enforcement Department should be established in various axis of the Capital Territory Abuja and the need for other Courts within the states in Nigeria to establish an Enforcement Department for proper and successful enforcement of court judgment and order.

Chapter one focuses on the general background to the study, it also examines the research problem, research objectives, justification and the significance of the study, scope and theoretical foundation of enforcement of judgment and court order. Chapter two analysed the principles of execution of judgment and court order, execution against the Government, functions of the enforcement Department and duties, liabilities and protection of the judgment creditor, Deputy Sherriff and bailiff. Chapter three focuses on the enforcement of money judgment in the High Court of the Federal Capital Territory, Abuja. It also examines the procedure applicable and the difficulties in attaching judgment debtor movable or immovable property and how sale of the attached property is conducted and how proceeds of the sale are disposed and also the procedure of enforcement within and outside jurisdiction and foreign judgment.

Chapter four, brings out the challenges associated with the enforcement of judgments and court orders in the High Court of the Federal Capital Territory, Abuja. Finally, chapter five concludes the research by showing how the difficulties and problems arise and the recommendation made for a successful enforcement of court judgment and order in the Territory.

CHAPTER TWO

PRINCIPLES OF EXECUTION OF JUDGMENT AND COURT ORDER

2.1 Introduction

A judgment of court is a determination of rights of which the court has cognizance and which gives some particular relief capable of being enforced.[22] It creates and vests rights and obligation in the parties making it obligatory for them to obey it. These parties are judgment creditors and judgment debtors. The judgments of the court should be complied with, without demand and in such a case it became operative from the moment it is delivered unless the court otherwise orders.

Process shall be issued by application of the judgment creditor from the court before which proceeding is sought to be enforced. The judgment shall be executed by or through court for division or district where party or property is situated by paying all the necessary fees for the issuance of writ. Such execution should be carried out by the sheriffs and bailiffs of such court.

Therefore, any judgment given by the court may be enforced by it, or any other court which has been seized of the matter, as it may direct.

2.2 Nature and Classification of Judgment

There are usually two parties to enforcement of a judgment, the judgment creditor and the judgment debtor. A judgment creditor is the party in whose favor the judgment or order was made and subsist, while a judgment debtor is the party against whom the judgment or order

[22] *Gov. Gongola State v. Tukur* (supra)p. 1, at 602, Afolayan A.F. and Okorie P.C. (2007). *Modern Civil Procedure Law.* Dee-Sage Nigeria Ltd., Lagos, p.297.

was made,[23] the use of the words ‘’creditor and debtor’’ does not imply that the judgment must be for payment of money. The terms, therefore, are used for every type of judgment or order. Thus the parties to an order of mandamus can be described as judgment creditors and judgment debtors, the former being the person entitled to enforce the order or to see that it is enforced and carried out and the latter, the one liable under the order to carry out the contents of same.[24]

A judgment debt itself is a debt or damages or other monetary award which has been pronounced upon by the court of competent jurisdiction. It begins when the court has pronounced its judgment in favor of the plaintiff.[25] Such debt or damages or award does not become a judgment until the court or Judge adjudges the defendant liability to pay it.[26]There are two exceptional cases in which judgment creditor or debtor is not a party to a suit. Where for example, there is devolution of the rights and liabilities under a judgment as a result of death or otherwise, the successor in title and either of the two parties may enforce or be liable under the judgment. Thus on the death of a judgment debtor before execution application for execution of judgment may be made against his legal representative or estate and if the court grants the application, the judgment may be executed accordingly. Notice of this application must be served on the personal representative.[27] For the purpose of this sort of execution, the property of the deceased judgment debtor may be attached and sold if the judgment is for money to be paid out of the property. If no property of the deceased can be found and the legal representative fails to satisfy the court that he has fully applied, such property of the

[23] . *Ekwunnife v. Wayne (W/A) Ltd*. (1989)5, NWLR 422, at 446, Sheriff and civil Process Act,2004, S. 19(1).
[24]. *Adebutu v. City Engineer* (1968) NWLR 133.
[25] . ibid.
[26] . ibid.
[27] . *Re: Shepherd* (1890) 43 ch. D. 137, Nwadialo F. (2000) *Civil Procedure in Nigeria.* University of Lagos Press, Lagos, Nigeria, p.967.

deceased, as shall be proved to have come into his possession, the judgment may be executed against the legal representative to the extent of the property not duly applied by him in the same manner as if the judgment has been against him personally.[28]

Where the judgment creditor died, his legal representatives may also apply to the court for leave to enforce the judgment. Such application may be made exparte.[29] An assignee of the judgment can only levy execution if the whole judgment is assigned,[30] but not where the assignment is of part only of the judgment.[31]Writ of execution may be issue on behalf of any party to the suit, by leave of the court, upon proof of his title to the benefit of the judgment, and upon substitution of the name of the new judgment creditor.

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

[28] . Judgments (Enforcement) Rules, Order 2, Rule 17, 18 and 19.
[29] . *Mercer v. Lawrence* (1878)26WR 506.
[30] . *Foster v. Baker* (1910) 2, K.B., 636.
[31] . *Aloa v. Latayo in Re Omo-Eboh* (1962) 2, All NLRR, 165.

to be timed in such manner as the court thinks fit, and may give all necessary directions for that purpose.[32]

2.2.1. Procedure for the Application of Process

a) Time within which execution may be levied:

A decree or an order of the court may command immediate authority and must be obeyed without demand immediately after the order has been made. However, if there is no immediate compliance, execution can only commence after expiration of a specified period of time from the date of judgment. Under the rules, no process other than that right of possession shall, except by express leave of court, be issued until after the expiration of three days from the day on which judgment is given.[33] For a writ of possession the stipulated time of issue is after the expiration of the day on which defendant is ordered to give possession or if no day is fixed by the court for giving possession, then after the expiration of fourteen days from the day on which judgment is given.[34] As between the original parties, process, otherwise than against the person may be issue at any time within six years and against the person at any time within two years, from the date of judgment which is immediately sought to be enforced.[35] But where then execution of the judgment is by way of proceedings against the person of the judgment debtor e.g., his committal to prison, the necessary process or writ must be issued within two years from the date of the judgment and when the execution is by way of proceeding against his property, e.g. attachment and sale, the corresponding period is six years.

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[32] . Sheriffs and Civil Process Act, 2004, Section 21.
[33] . Judgments (Enforcement) Rules, Order 4, Rule 2.Abubakar S. O. (2008) *COMPEDUIM OF LAWS Under the Nigerian Legal System*(2nd ed),(Vol. 2),Maiyati Chambers Lagos, Nigeria,p.28.
[34] . ibid ,Order 4, Rule 1.
[35] . ibid, Order 4, Rule 8(1).

With leave of court, execution can still be levied after the expiration of the prescribed period in each case.[36] The application for leave is made exparte.[37] Where leave is given a note thereof is made on the process. Failure to endorse the process to show that leave has been given amounts to an irregularity. The effect of which is not only that a process was not taken out as required by law but also that no process was taken out at all.[38] The judgment creditor, is however, at liberty to cause a fresh process to be issued.[39]

A writ of execution remains valid for one year from the date it was issued. After one, year the writ expire, and once execution is carried out with the expired writ , the execution becomes void.[40] But the court may, on the application of the judgment creditor, extend it beyond the period. A new writ may however be issued instead of applying for the extension. But the disadvantage in so doing is that, the new writ takes priority from it date.[41] Whereas, by renewing a writ, its priority is preserved. Execution is effected between 6:00am and 6:00pm of any day other than a Sunday or public holiday, unless the judgment or magistrate directs otherwise by order endorsed on the process to be executed.[42]But where the execution is for attachment of the judgment debtors property, execution can be carried out as early as 5:00am and can be extended to 11:00pm as the case may be, depending on the nature of the of the person against whom execution is to be levied, e.g. Government or security officers.

b) The court from which process is to issue:

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[36] . ibid. Order 4, Rule 8(2).
[37] . ibid.
[38] . *Barau v. United African Company* (1971 - 72), NNLR, 14.
[39] . ibid.
[40] . Judgments (Enforcement) Rules, Order 4, Rule 4(10), High Court of the Federal Capital Territory, Abuja ,Civil Procedure Rules, 2004, order 4, Rule 16(1). Okoye Obi A. (1983) *Essay On Civil Procedings Vol.1,* Elmina Books Ltd.Enugu, Nigeria.
[41] . *Re Broughton* (1917)5, R (NSW) 29.
[42] . Judgments (Enforcement) Rules, Order 2, Rule 4.

The rules says, save in the exceptional cases to be mentioned "process shall be issued from the court before which the proceeding is pending or which gave the judgment sought to be enforced , as the case may be, and from no other court".[43] As a general rule a judgment may be enforced in the court which gave the judgment and in no order court.[44] The judgment given on appeal by an appellate court becomes the judgment of the court from which the appeal came.[45] If therefore, in an appeal against the judgment of a court, the Appeal Courts makes and order, that order becomes an order of the court and should be enforced therein and not in the appeal court.[46] The rules of an appellate court may expressly empower the lower court to enforce the judgments or orders of the appellate court.[47] The Supreme Court, in *J.O. Anakwenze v.Louis Aneke& others*,[48] held that, the court of appeal being a superior court of record, had an inherent power to enforce a judgment given by it on appeal. Apart from this power, the court of Appeal Rules, 1981 [49] and the Supreme Court Rules, 1985[50] empower the Court of the Appeal and Supreme Court, respectively, to enforce their judgments or to rent same to the court below for enforcement.

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

[43] . ibid, Order 2, Rule 24.
[44] . *I.A. Oyeteso v. MadamTola* (1968) NMLR, 317.
[45] . ibid.
[46] . ibid.
[47] . Court o Appeal Rules, 1981, Order 5, Rule 4.
[48] . (1985), 6, S. C., 41.
[49] . Judgments (Enforcement) Rules, Order 5, Rule 4.
[50] . ibid, Order 9, Rule 15.

judgment had been pronounced by itself.[51] Any order given or made by the court may be enforced by the court or by the lower courts as may be most expedient.[52]

The exceptional cases referred to in Rule 24 of Order 2 in which execution may issue in a court other than the one that give the judgment are: where a judgment has been obtained in a Magistrate Court, execution against the immovable property of the judgment debtor issues only from the High Court and not the magistrates' court.[53] A judgment summons against a judgment debtor is issued by the court in the district or division in which the judgment debtor resides or carries on business, or in the case of two or more judgment debtors, in which one of them resides or carries on business, which court may not necessarily be the one that gave the judgment.[54] A writ of sequestration, or a writ of interim attachment directed against any immovable property of a defendant or judgment debtor in execution of a judgment of a magistrates court can only issue out of the High Court upon the transfer thereto of the proceedings.[55] Garnishee proceedings may be instituted in court other than the ones that gave the judgment[56] and a judgment given in one state's court may be enforced in a court of another state under the provisions of the sheriff and civil process Act, these will also be discuss later.[57]

c) The place where execution to be levied:

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

[51] . ibid, order 43, Rule 28.
[52] . ibid, Order 43, Rule 29.
[53] . Sheriffs and Civil Process Act, 2004, S.44, Section 21.
[54] . ibid,S.44, Section 21 , S.58, Section 21
[55] . Judgments (Enforcement) Rules, Order 4, Rule 13.
[56] . ibid ,Order 8, Rule 1.
[57] . ibid, Section 104 and 105, Section 21.

other court.[58] If the execution is against the person of the judgment debtor, then the venue for execution is the division of district the person is situated and, as against his property in that in which it is situated. There are, however some exceptions to these rules which will be considered in due course example, Garnishee proceedings and execution in a state of a judgment given by a court in another state which will be discuss later. A judgment creditor who wants to enforce a judgment may make an application for the appropriate process to the registrar of the court. If the required process is one which may issue without an order of the Court or a judge or magistrate, he shall apply to the registrar in the first instanced for it. But if it is one for which such order is necessary, the application to the registrar is made after the order for its issue has been obtained.[59]

For application for issue of some processes, example, writ of execution, a praecipe or form is required or prescribed. In such a case, the judgment Creditors is only to obtain the praecipe from the Court, dully completed and then return it, as completed, to the registrar.[60]If a praecipe is not necessary the application to the registrar is made by the judgment creditor filing a written request for the issue of the process specifying the number and title of the suit, the date of judgment, the nature of the process, and the name of the party against whom and the amount, if any, for which it is to be executed.[61]

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

[58] . Judgments (Enforcement) Rules, Order 2, Rule 26.
[59] . Judgments (Enforcement) Rules, Order 4.
[60] . ibid, Order 4, Rule 4
[61] . ibid

judge will request before signing the writ or warrant. The registrar will then forward the process to the Enforcement and Execution Department, from which the head of the Department would minute and forward the file to the Chief Registrar (the Deputy Sherriff) for approval. But the registrar may, at any time, take direction of the Court as to any application, and in the meantime, refuse to issue the process.[62]

d) Cost and expenses of execution:

Second schedule to the rules contain fees to be paid for the issue of writs (depending on the nature and amount of the judgment sum) and sheriffs expenses for carrying out such functions related to the execution. These fees are paid in the first instance by the judgment creditor. He also pays for the expenses of the conveyance to and subsistence of the judgment debtor in prison in case of the latter's committal therein for default in carrying court's order. The judgment creditor is legally responsible for paying the expenses and providing all necessary fees, and the execution shall not be proceeded with until he has done so.[63] Where the execution is withdrawn, satisfied or stopped, any fees that might have been properly incurred by the bailiff during execution shall also be paid by the judgment creditor.[64]

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

[62] . ibid ,Order 4, Rule 6.
[63] . Judgments (Enforcement) Rules, Order 2, Rule 29(1), also *smith v. Broadbent and Co*. (1892) 1, Q.B., 531.
[64] . ibid ,Order 2, Rule 29(3).
[65] . ibid ,Order 2, Rule 31.

cases where the costs had been needlessly incurred.[66] The judgment creditor may levy any interest on the judgment which the court may have ordered. Therefore the sheriff, deputy sheriff and bailiff are public officers and paid for their services by the state.

Where the judgment debtor pay the judgment sum but refuse to pay for the expenses and cost for the execution, in the High Court of the Federal Capital Territory, Abuja, the officers in charge of the execution are to attach the judgment debtors properties worth the amount of the execution fees, which after five days on the application of the judgment creditor for valuation and sale, will be valued and sell to recover such amount of fees incurred. Where judgment is to the effect that a party is entitled to any relief subject to or upon the fulfillment of a condition or contingency, the party so entitled can only enforce that judgment if the condition has been fulfilled or the contingency has arisen. Application for leave of court made before the proceeding to execution and the court may, then if satisfied that the right to relief has arisen according to the terms of the judgment, order that, writ of execution be issued accordingly, or direct that any issue or question necessary for determination of the right of the parties be tried as in a suit.[67]

The party may be deemed to have waived the relief if he fails to fulfill the condition. So where an order was made in favor of the defendants for relief from forfeiture, subject to their performance certain conditions some of which they declined to carry out, it was held that the order could not stand in the circumstance and that the position was as if their application for the relief of forfeiture was refused by the Court.[68]The party entitled to a conditional judgment cannot be compelled to perform the condition, his only penalty being the loss of the benefit

[66] . Judgments (Enforcement) Rules, Order 2, Rule 32.
[67] . ibd,Order 2, Rule 15.
[68] . *Talbor v.Blindell* (1908) 2, K.B 114

of the Judgment.[69] If there are cross judgment between the same parties for the payment of money, execution is taken by that party only who obtained judgment for a larger sum. Satisfaction for the smaller sum is then entered on the judgment for the larger sum as well as satisfaction on the smaller sum. If both sums are equal, satisfaction is entered upon both judgments.[70] In that case there is no need for execution; Judgment in an action and in counter-claim are cross judgment.

2.2.2. Concurrent Writ of Execution

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

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

[69] . Ibid
[70] . Judgments (Enforcement) Rules, Order 2, Rule 13.

each. This is because of the general rule of practice to the effect that upon judgment, a judgment creditor can issue only one execution,[71] as in the maxim "one judgment, one execution". Process may be issued concurrently for execution in one or more division or district, but the costs of more than one process and execution shall not be allowed against judgment debtor except by order of the court.[72]Where a judgment summons is pending or an order or warrant of commitment is outstanding in respect of money payable under a judgment, no other writ of execution can be issue in respect of the money so payable except by leave of court.[73] So that no other writ of execution should be issued concurrently with a pending judgment summons.

2.2.3. Execution by Leave of Court

Normally the judgment creditor proceeds to enforce the judgment as of right as soon as the necessary procedural requirements have been fulfilled. No recourse to the court is necessary. Where leave is necessary the judgment creditor applies to the Court for it by motion supported by affidavit. The motion may be required to be on notice or *exparte* accordingly as the Rules provided. It is within the discretion of the Court to grant leave to execute [74] Dismissal of an application for leave is not a bar to a second one where such a later application is founded on new facts and it can only be granted on facts not before the Court on the first application.[75]Where leave is required, any execution proceedings initiated without

[71] . *foster v. Baker* (Supra) P.3
[72] . Judgments (Enforcement) Rules, Order 4, Rule 11.
[73] . ibid, Order 4, Rule 12.
[74] . *W.T. Lamba and Sons v. Ride* (1948) 2, K.B., 331
[75] . Ibid

such leave are incompetent and should be dismissed.[76]Cases where leave is required before execution are provided under different orders and rules, these are:

i. Execution on Sunday and Public Holidays:[77] As a rule execution is not permitted on these days. But a judge or magistrate may otherwise direct by order endorsed on the process to be executed, which arise in the case of urgency. The judgment creditor may then apply to a judge or magistrate, not necessarily in open court for required endorsement.

ii. Where judgment is conditional; [78]

iii. Judgment against personal representative of deceased person;[79] Judgment may be executed against personal representative of a deceased judgment debtor if no property of the latter can be found and the personal representative fails to satisfy the court that he has duly applied such property of the deceased as shall be proved to have come into his possession to the extent of the property not duly applied by him.

iv. Execution of a judgment against a partnership, against a person claimed by the judgment creditor to be a partner of the firm.[80] Here the Judgment Creditor claims that, that person is a partner. He will then apply by motion on notice for leave of Court to execute the judgment against the partner of the firm. On hearing of the application, the Court may grant leave to execute, if liability is not disputed by the partner of the firm. Otherwise it may order the issue of liability to be tried.

[76] . *Ojo v. Williams & Anor*. (1933)11, NLR 163 at 164.
[77] . Order 2, Rule 4, Judgments (Enforcement) Rules.
[78] . ibid ,Order 2, Rule 15.
[79] . ibid ,Order 2, Rule 19.
[80] . Judgments (Enforcement) Rules, Order 2, Rule 21.

v. Execution before the expiration of three days from date of judgment [81]

vi. Execution by persons not party to the suit.[82]

vii. Execution against the person or property of judgment debtor after two years or six years from date of judgment,[83] which made by motion *exparte*.

viii. Execution where change has taken place by death, or otherwise, in the parties entitled or liable to execution.[84]This can also be by bankruptcy of the parties. Therefore on the death of the judgment creditor, application is made *exparte*,[85] while if it is the judgment debtor, who has died to enforce the judgment, the judgment creditor will apply for leave by motion on notice to the personal representative of the deceased.[86]

In case of bankruptcy of a party, his trustees in bankruptcy step into his shoes. The judgment creditor's trustee in bankruptcy may, by leave of court enforce a judgment in favor of the bankrupt and without the need of his being added as a party.[87]Devolution of rights can arise by assignment of judgment debt. Any assignee of the judgment debt may, by leave of court, enforce it.[88] But he cannot do this if part only of the debt is assigned as execution can only be levied against the whole judgment.[89] The assignor does not have to be added as a party.

[81] . ibid, Order 4, Rule 1(2).
[82] . ibid, Order 4, Rule 2.
[83] . ibid, Order 4, Rule 8.
[84] . ibid, Order 4, Rule 9.
[85] . *Mercer v. Lawrence* (Supra) P.15.
[86] . *Reshephard* (supra)p.14.
[87] . *Re Bagley* (1911)1, K.B 317.
[88] . ibid, also *Kayley v. Hothersall* (1935)1, K.B. 607.
[89] . Foster v. Baker (Supra) P.25.

ix. Where a husband is entitle or liable to execution upon a judgment for or against his wife.[90]

x. Execution upon judgment of assets in Futuro.[91]

xi. Where a party is entitled to execution against any of the Shareholders of a joint stock company upon a judgment recorded against such company or against a public officer representing such company.[92]

xii. Execution against immovable property.[93]

xiii. Execution upon materials used in construction of a building.[94]

xiv. Where there is a pending judgment summons.[95]

xv. Execution by warrant of committal.[96]

xvi. Execution on property *custodia legis*.[97]

xvii. Execution for entire balance of judgment where there is already an order for instalmental payments. This replaces the original judgment that decreed for payment of the whole amount due, there is no longer a present debt of the amount of judgment debt but a debt accruing due by so much a month[98] the judgment creditor can only levy execution for

[90] . Judgments (Enforcement) Rules, Order 4, Rule 9(6).
[91] . ibid ,Order 4, Rule 9(2) (c), Nwadialo F. (2000),*supra* p.978.
[92] . ibid, Order 4, Rule 9(i) (d).
[93] . ibid, Order 4, Rule 16(1) & (2).
[94] . Sheriffs and Civil Process Act, 2004, Section 45Section 21.
[95] . Judgments (Enforcement) Rules, Order 4, Rule 12.
[96] . ibid ,Order 9, Rule 13.
[97] . ibid, Order 3, Rule 5.
[98] . *Oduro v. Devis* (1932)14, W.A.C.A. 46.

the amount of instalmental which has become due[99] if he seeks to levy execution on the entire balance he must make an application to that end in Court.[100]

xviii. Execution by writ of delivery where judgment is for goods or payment of its value, where judgment is given for the plaintiff for the return of the property claimed or payment of its value, the defendant has an option to return the goods or pay the value. But "the court may upon application by the plaintiff order that execution shall issue for the delivery of the property without given the defendant the option of retaining it upon paying the value assessed, (if any)".[101]Leave is therefore necessary where delivery is only required by the judgment creditor. The application could be made *exparte*.[102]

2.3 Execution of Judgment against Governments

The Sheriffs and Civil Process Act and Judgment Enforcement Rules (2004) provide that, any property in custody or control of any public officer shall be liable to attachment in execution of a judgment, with the consent of the Attorney General, and such order or notice of attachment must be delivered to such public officer. It will appear that there was in this respect a statutory prohibition against the issue of execution against the Government to enforce court judgments and order. There is, at present, no decision of the Court of Appeal or the Supreme Court on the invalidity of the provision of the Sheriffs and Civil Process Act and Judgment Enforcement Rules, in respect to the prohibition of enforcement against the Government.

[99] . *Reghumal v. Allagoa* (1961) All N.L.R, 572.
[100] . ibid.
[101] . *Omaladun& Other v. Akunsanya* (1947)18, NLR, 115, also Supreme Court Practice, 1982, p. 764 – 765, para. 45/43.
[102] . Ibid.

Therefore, by virtue of the provisions of the constitution which states that, judicial powers vested shall extend to all inherent powers and sanctions of the court of law, and shall extend to all matters between the government or authority and any person in Nigeria. It can be argued that, the provisions of the sheriffs and Civil Process Act and Judgment Enforcement Rules, has been displaced. The intention of the Constitution is that in matter of enforcement of judgment of court of law, there should be no distinction between the remedies available against the Government and those available against any person other than the Government. Now the provision of the Sheriffs and Civil Process Act and Judgment Enforcement Rules is inconsistent with the provisions of the Constitution and therefore void (supremacy of the constitution). [103]

Therefore, Judgments against the Government in the High court of the Federal Capital Territory, Abuja are successfully enforceable. Though compliance by the Government before the establishment of the Enforcement Department was so difficult, due to the incompetency of the bailiffs and improper application of the procedure laid down by the Sheriffs and Civil Process Act and Judgment (Enforcement) Rules, the series of embarrassment faced by the Government in enforcing judgment against them, makes the Government to comply. Once the Government is served with the judgment certificate, they forward the judgment sum to the court or pay directly to the judgment creditor. Where the Government has no money to pay, they willfully give out their property to be kept in the court, pending the time they get allocation and pay the judgment sum to the judgment creditor or to the court. But failure to do so, their property will be attached sold, and if the judgment sum is not realized, further

[103] . The Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 6 (a) and (b) and Section 1(1) and (3), Sheriffs and Civil Process Act, Section 84 (1), and Judgment (Enforcement) Rules, Order 5 Rule 5.

execution will be levied against them until the whole amount of the judgment sum is realized together with the additional execution fees paid by the judgment creditor .[104]

In the High Court of the Federal Capital Territory, Abuja, judgment creditors or their counsel, now garnishes the account of the government which is easier for them to get their judgment sum. Once garnishee absolute is granted against any bank owing the Government, the Bank forward a draft of that amount to the court or pay directly to the judgment creditor. Where execution has to be levied against the bank for failure to pay the judgment sum against the Government, the bank pays both the judgment sum and the execution fees, by raising a draft to that effect, especially when the judgment is against the Police or Military.[105] Note that in the High Court of the Federal Capital Territory, Abuja, draft is only accepted not cheque as payment of judgment sum.

2.4 Functions of the Enforcement Department in the High Court of Federal Capital Territory, Abuja

The enforcement Department promptly enforce all judgments of Courts upon receipt of a writ of execution duly signed by the Judge ,approved by the Deputy Sheriff, unless same is formally stayed by the Judge or Appeal Court. The enforcement Department does not initiate enforcement or engage in any communication with judgment debtors or their counsel. The Enforcement Department conduct all sale of property attached during the enforcement, at the expiration of the specified days provided by the Act (five days), unless where the goods are of perishable nature or the person whose goods have been seized so requests in writing, in which

[104] . *F.C.D.A v. Triple C. Acquisition Ltd,* FCT/HC/CV/1172/2007 (Unreported).
[105] . *Hon. GeoffreyIbe v. Inspector General of Police and First Bank Nig. Ltd.* FCT/HC/CV/1408/2013 (Unreported), Abubakar A.O.(2008)*COMPEDUIM OF LAWS Under the Nigerian Legal System*(2nd ed)Vol.2,Maiyati Chambers,Lagos,Nigeria.p.31.

the five days period shall not apply.[106] To advertise on the Court public notice board at least three days preceding the sale of all attached property. Sale shall be by public auction and to the highest bidder. The notice shall include the venue, date and time of the sale.

Where there is an order for stay of execution or the matter is on appeal for payment of judgment sum, such money will be deposited into the High Court account by the enforcement Department until final determination of the matter. In all cases the enforcement Department transmit to the court from which the judgment emanated, the fact of its compliance in writing signed by the head of the Department giving details of what was done.[107] To keep proper records of all enforcement files attached property. And make payment of judgment sum to the judgment creditor where the judgment debtor pays judgment to the court.[108]

All execution are lawfully levied if it is based on a process duly sign and issued and is in accordance with that process. The process must be in accordance with judgment to be enforced. It must be the correct process for the execution of a particular type of judgment. Any execution which does not fulfill these requirements is wrongful.[109] The procedure laid down for the execution must be meticulously observed.

A writ must be issued *bonafide*and for the purpose of enforcing a judgment. It is wrongful to issue it maliciously or without good reason or for a larger sum than is due under the judgment.[110] A wrongful execution is not necessary void but renders the sheriff liable for

[106] .Section 29(1),Sheriffs and Civil Process Act.
[107] . High Court of the Federal Capital Territory, *Practice Direction for the Enforcement Department,*(2013), By Hon. Chief Judge, I.M.Bukar.
[108] . Ibid.
[109] . *Moore v. Lambeeth country court registrar* (No. 2)(1970), 1Q.B., 560.
[110] . *Philips v. General omnibus Co*. (1880)50, L.J.Q.B,112. See also *Chessold v. Cratchley* (1910) 2 K.B., 244.

damages.[111]Compliance with the relevant provisions of the act and the rules is necessarily for the due execution of a process. Execution is illegal if it is levied outside the jurisdiction authorized by the writ of *fifa*.[112]

2.5 Duties, Liabilities of the Judgment Creditor, the Sheriff and Bailiffs and their Protection

As execution is commenced at the instance of the judgment creditor, all the steps in it are taken on his demand. He provides the means for the identification of the judgment debtor and pays all the fees for an incidental to the execution.[113]The judgment creditor is therefore, liable for any damage arising from any illegal or irregular proceedings taken at his instance, although the bailiff or any other officer is not thereby exempted from any liability to which he will otherwise be liable.[114] The judgment creditor is vicariously liable for any illegal or irregular proceedings taken on his behalf by the bailiff or any officer of the court but the tortius liability of the sheriff, bailiff or any other officer of the court at the common law of wrongful execution still remain unchanged.[115] The judgment creditor, the sheriff and the bailiff are all liable for damage for any irregular or illegal proceedings in the execution.[116]

They are also liable for wrongful imprisonment of any person by him.[117]The sheriff shall receive writ and process of the court issued in accordance with the act and shall be charged

[111] . *Walson v. Murray &co.* (1955) 2, Q.B, 1.
[112] . *Jadesola v. Akinola* (1931) 10, N.L.R, 28.
[113] . Judgments (Enforcement) Rules, Order 2, Rule 29(1).
[114] . ibid, Order 2, Rule 29(2).
[115] . *Far East merchantile v. Philips* (1974) 11, SC, 225; (1974)1, ALL, NLR, (pt 2) 246 at 252.
[116] . ibid.
[117] . Sheriffs and Civil Process Act, 2004, Section 14, Section.

with making returns thereto.[118] He shall also at the request of a person delivering a writ to him execution shall give a receipt for that all writ stating the hour and day of the delivery.[119]

Therefore, every deputy sheriff may be charge generally with the performance of the duties of the sheriff and shall be subject to the same liabilities and protection as the sheriff.[120]

Where a sheriff, deputy sheriff or bailiff or any other officer of the court charged with the enforcement of a writ, warrant or other process of execution, sells any goods seized by him from the possession of the judgment debtor without any notice of the claim to the said goods, he is not liable in any action brought in the respect of the sale. Any claimant to the goods may, however, pursue whatever remedy to which he may be entitled against any other person but not the sheriff, deputy sheriff or bailiff.[121] But application is made to the court for the service of a licensed auctioneer, sales of property by auction shall be conducted by the bailiff under the supervision of a deputy sheriff.[122]

Neither the sheriff nor the deputy sheriff is liable to be sued for any act or omission of any police officer or other person in the execution of any process, which has been done or may have occurred either through disobedience or neglect of the orders or instruction given by the sheriff or the deputy sheriff.[123]Therefore, the sheriff may appoint any person to be a paid or an unpaid bailiff.[124] Where a bailiff employed to execute any process against the person or property of the judgment debtor loses the opportunity of execution of process by reason of neglect, connivance, or omission, any party aggrieved thereby may complain to the court

[118] . Sheriffs and Civil Process Act, 2004, Section 8.
[119] . ibid, Section 10.
[120] . ibid, Section 13.
[121] . Section 16, ibid.
[122] . Order 1, Rule 2, Judgments (Enforcement) Rules.
[123] . Section 17, Section, Sheriffs and Civil Process Act, 2004.
[124] . Order 1, Rule 3, Judgments (Enforcement) Rules.

issuing the process.[125]On such complaint being made, the registrar of the court issues a summons in form 32, of the first schedule to the Rules, which is then served on the bailiff as an ordinary summons.[126] There must be ten (10) clear days between the service and the return date.[127] The complaint is tried by the court and evidence from the complainant and by the bailiff taken. If the neglect, connivance or omission is provide to the satisfaction of the court, the bailiff will be order to pay such damages as the complainant might have suffered as a result, though such damages should not exceed the sum for which the execution issues.[128]

A sheriff or any officer executing any process of the court or the person at whose instance the process is executed shall not be deemed a trespasser by reason of any irregularity or informality in any proceedings on the validity of the process depends, or in the form of the process or in the mode of executing it.[129] But any person aggrieved may bring an action for any "special damage" sustained by him by reason of the irregularity or informality against the person guilty thereof.[130]The term special damage in this context means particular damage suffered as a result of irregularity in executing a court process.[131]In an action for such damage no cost are recoverable unless the damages awarded exceed four Naira.[132]

An action against a bailiff for anything done in obedience to any process issued by a court should not be commenced unless:

[125] . Section 40(1), Sheriffs and Civil Process Act, 2004
[126] . Order 1, Rule 17, Judgments (Enforcement) Rules.
[127] . ibid
[128] . Section 40(2), Sheriffs and Civil Process Act, 2004
[129] . Sheriffs and Civil Process Act, 2004, Section 41.
[130] . ibid.
[131] . *Morawo v. Salako* (1958) WRNLR, 40.
[132] . Sheriffs and Civil Process Act, 2004, Section 41.

a) A written and signed demand for inspection of the process and for a copy of it is made or left at the office of the bailiff by the party intending to bring the action or his solicitor or agent; and

b) The bailiff refuses or neglects to comply with the demand within six days after it is made.[133]

If the action is commenced after such a demand has been made but not complied with, judgment may be given for the bailiff if

The process is produced or proved at the trial, notwithstanding any defects of jurisdiction or other irregularity in the process.[134] But the judge or magistrate who issued that process may be joined and judgment is given against him, the cost to be recover by the plaintiff is liable to pay the bailiff.[135]In any action against any person for nothing done in pursuance of the sheriff and civil process act, the production of the process of the court is deemed sufficient proof of the authority of the court previous to the issue of the process.[136]

2.6. Mode of Execution

Execution include legal execution, *strictusensu* and equitable executon,[137] but only legal execution is considered here. An - example of equitable execution is execution by means of appointment of a receiver. These mode of enforcing a judgment or order of court will depend on the nature of the particular judgment or order made. But generally, the method to be employed will depend on whether judgment or order of the court direct the payment of

[133] . Sheriffs and Civil Process Act, 2004, Section 42(1).
[134] . ibid ,Section 42(2).
[135] . ibid.
[136] . ibid, Section 43.
[137] . *Blackman v. Fysh* (1892)3, 209 at 217. *Tukur v. Govt of Gongola state* (Supra) P.1.

money or doing or carrying out some act. Thus, the following points are important with regard to enforcement of judgment:

a) A judgment for payment of money may be enforced by a writ of *fiery facias*, garnishee proceedings, a charging order, a writ of sequestration or an order of committal on a judgment debtor summons. These will be fully discussed letter in the next chapter.

b) A judgment for possession of land may be enforced by a writ of possession, a writ of sequestration or a committal order.

c) A judgment for delivery of goods may be enforced by a writ of specific delivery or restitution of the goods or their value, a writ of sequestration or an order of committal.

d) A judgment ordering or restraining the doing of an act may be enforced by an order of committal or writ of sequestration against the property of the disobedient person.[138]

Apart from these methods, which are provided in the sheriffs and civil process act, the other method of enforcing judgments are decree of dissolution of partnership and winding up of companies as well as adjudication in bankruptcy. Judgment may also be enforced by some auxiliary processes like reversal of an act done in contravention of the order of the court.

2.6.1. Order distinguished from judgment:

An order is a written direction or command delivered by court or judge while judgment is a decision made by a court in respect of the matter before it. An order is also the mandate or determination of the court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some steps in the

[138] . *Blackman v. Fysh* (Supra) p.37.

proceedings. While an order may under some circumstances amount to a judgment, they must be distinguished, owing to the difference consequences flowing from them, not only in the matter of enforcement and appeal but in other respects as, for instance, the time in within which proceedings to annul them must be taken. Rulings on motion are ordinarily orders rather than judgments.

2.6.2 Are all Judgments Enforceable:

Every judgments of the court must be obeyed and is effective from the date of delivery or from such date as the judgment itself appoints. The judgments is meant to be obeyed without demand and if there is default in obedience, the judgment creditor is entitled to commence enforcement proceedings. Generally, any judgments at the time for compliance which has arrived, which has not been satisfied, which requires the payment of money or which direct its recovery, or which require the transfer, delivery or recovery of possession of property, real or personal or which require a person to do or abstain from an act, which execution is not stayed, which has not become statute barred may be executed. The court will also enforce order of industrial tribunals, an award on arbitration governed by the Arbitration Act and a maintenance order. The foregoing can be classified as executor judgments.

In Okoya v. Santili[139], the supreme court defined executory judgments as those judgments which declare the respective rights of the parties and then proceed to order the defendants to act in a particular way; for example to pay damage or to refrain from interfering with the plaintiff's right. The apex court further held that such judgments are enforceable by execution if disobeyed. Suffice it to notice that there are some judgment that do not require

[139] (1994) 4 NWLR (PT. 338) 256.

enforcement or are incapable of being executed as the judgment or the order itself is all that the party obtaining it requires. One of such judgment is a declaratory judgment, the reason being a declaratory order merely declares the right of the parties and is dormant; hence it has no force of execution in the judgment or order.

A declaratory order may be however be enforced by an action. Thus, the parties who obtain a declaratory judgment or order may go back to the court and seek an order to enforce it. Affirming this position, Karibi Whyte JSC in the case of Okoya v. Santili[140] held as follows:

> "…It is a matter of general consensus among academic writers and judicial decisions that a declaratory judgment which is an embodiment of recognition of a particular right may be the basis for subsequent proceedings to enforce such rights, where such right is threatened or is being violated, recognition of a particular right may be the basic of subsequent proceedings to enforce such rights, where such right is 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 judgments remain a dormant right until subsequent proceedings have been taken to protect the threat to or violation of the rights so declared in the judgment or order."

Another type of judgment which can be executed is an interlocutory judgment. The supreme court in *Tukur v Governor Gongola State* noted:"One of the types of judgment which cannot be executed is an interlocutory judgment because it does not at once affect the status of the parties; neither does it finally dispose of their right since it leaves undecided the various points at issue and no execution can proceed without reference to court."[141]

[140] Ibid.
[141] . (1989) (Supra) p.1 *Blackman v. Fysh* (Supra) p.35

CHAPTER THREE

METHOD OF ENFORCEMENT OF JUDGMENTS

3.1. Introduction

This chapter will focus on Method of enforcing Money Judgment. Under the judgments (Enforcement) Rules, a judgment for payment of money to a party is enforced by one of the following means: writ of *Fieri Fascias* (that is, writ of *fifa*); garnishee proceedings; judgment summons. And judgment other than money judgment is enforced by writ of possession for possession of land and warrant of possession for ejecting tenant.

3.2. Writs of *fierifascias* (writ of *fifa*)

Writ a *FieriFacias* is commonly called a writ of *"fifa*". Its essence is that the amount ordered to be paid is realized by the seizure and then sale of the judgment debtors properties and chattels. From the proceeds of the sale, the judgment debt is satisfied. Therefore the sheriff is directed to seize and sell enough of judgment debtors' goods to satisfy the judgment debt. It is thus a writ of attachment (i.e seizure or detention) and sale against goods. This form is specified in the first schedule to the Act, form 4, 5 and 6.[142] The writ may be against the goods of either the plaintiff or the defendant, depending on whom the order of payment is made against. Thus a defendant (judgment debtor), who succeeds on an appeal against a judgment in favour of the plaintiff (judgment creditor) for damages and costs, may recover

[142]. Sheriffs and Civil Process Act, CAP S6 LFN 2004.

such if already paid by the writ.[143] If he refuse to pay the sum, writ of attachment will be use against his property. By means of this writ, execution is levied not only against chattels but also immovable property of the judgment debtor. The execution is directed against goods and chattels *a*nd it is where these are not sufficient for payment of the debt that execution is extended to immovable properties. This will be fully discussed latter

3.2.1. Procedure for Application for issue of Writ against Moveable Property

If there is default or failure of payment of any judgment sum, application may be made to the registrar of such court that gave the judgment for issue of a writ of *fifa*. This is done by the judgment creditor by filing with the registrar praecipe in form 3 in the first schedule to the Act which is for execution against movable properties. The name and address of the judgment debtor should be correctly stated in the praecipe so as to avoid mistake of executing on a wrong properties, where such happens the judgment creditor at whose instance and instruction the error was committed may be liable to claim for damages for tresspass to goods.[144] Where two or more judgment debtors are jointly liable, an application may be made in the same praecipe for execution against the goods of all such debtors. Court fees are changed for the issue of writs and the judgment creditor pays.

But in practice, in the F.C.T. High Court Abuja, judgment creditor or his counsel write an application on his letter headed paper (for those that have letter head), for the issuance of writ of fifa to the registrar of the court that gave the judgment, stating the correct name of the parties and the suit number, write his full name and sign in conclusion of his application.

[143] . *Ohumogu v. Deputy Sheriff and Another* (1968) NMLR 1773.
[144] . *Morris v. Salberg* (1889) 22 QB D 614.

The registrar of that court prepare a file that carries the parties name and the suit number, he arrange the application made by the judgment creditor or his counsel, judgment certificate sign by the registrar and the complete writ of attachment which is signed by the judge or magistrate and also sign by the registrar of that court.

Sometimes delay is caused by the registrars. Registrars of the court may try to frustrate the process, by not taking the file to the judge to sign or not transporting the file from the court to the Enforcement Department for further action. Or the registrars sabotage the process by informing the judgment debtor about the application made against him, in which the judgment debtor may rushed to the court and apply for motion for stay of execution, which will automatically delay the process until the determination of such application. Files are not supposed to be in the hands of any person other than the court officials. Most registrars may request for transportation money were the court is not within the High Court complex, and after payment by the judgment creditor or his counsel, still the registrar will not bring the file to the Enforcement Department, he may even request for more money. There is need for decentralization of the Enforcement Department to avoid extortions by the court registrars.

The issuance of writ by the registrar in the appropriate form, i.e. form4, which is for writ of attachment and sale against goods of defendant, form5 for writ of attachment and sale against goods of defendant for part of amount due and from6 for writ of attachment and sale against goods of plaintiff, as the case may be. This is done in the absence of any contrary application or motion for stay of execution.

The praecipe comprises two parts to be completed by the judgment creditor and the other by the registrar. One of the endorsement by the registrar is the date and hour of the application

for the writ. This date is important because it determines priority, judgment creditors taking priority as regards the proceeds of execution according to the respective dates and hours of receipt of their applications for the writ of *fifa*.[145] Thus a writ applied for on 1st January 2013, priority over that applied on 5th January 2013.[146] Even though both were issued on the same date, 6th January 2013, this is necessary where the writ are issued by the same court. Where writ against the property of the same judgment debtor have been issued from more than one court, the right to the property attached is determined according to the order of priority of the respective times of the application to the registrar for the issue of the writs.[147]

The registrar should cause to be inserted or endorsed in or upon the writ, the sum of money and cost adjudged and the fees for the execution of the writ.[148] The writ, as such is signed by a judge or magistrate in the case of judgment by a magistrate court. The part of the form endorsing the writ to the sheriff and bailiff is signed by the registrar. In the FCT High Court, Abuja, the execution fees inserted by the registrar may be less are more than the amount spend in carrying out the execution, where such happened any amount incurred will replace the amount written by the registrar and will be added to the judgment sum which the judgment debtor is to pay as the rules provide.[149]

Enforcement of judgments or court order is not something that can be done with magic or bear hands, it requires money, energy and time, depending on the kind of judgment to be carried out. Examples judgment against banks, ministries, companies, high dignitaries, ejecting tenant occupying an estate etc. enough securities are needed and utilities, like cranes,

[145]. *Tijani v. Agbevegbe(*1941)7 WACA 66.
[146] . *Ajala v. Akinboro* (1933) 11 NLR.
[147] . Sheriffs and Civil Process Act, Section 31; *Lawal v. Falode* (1965) 1 All NLR 375.
[148]. ibid ,S.22(11).
[149] . Judgment (Enforcement) Rules, Order 2, R.32.

toying vans, trucks, laborers, sometimes carpenters and electricians depending on the nature of the enforcement.

Thus, writing execution fees by the registrar on the writ is not necessary. He may not know the exact amount to be spend, and to avoid contradiction of the amount written by the registrar and the amount spend by the enforcement officers that carry out the execution, the space provided for execution fees on the writ, are normally left vacant, neither the registrar nor the enforcement officer have the right to make any alteration on the writ after the judge or magistrate sign the writ. Judgment debtors might think the officers are trying to extort money from them on seeing the amount written on the writ and the amount written as the execution fees spent. There is needed to leave the column for execution fees blank, so that after the enforcement has been carried out, the officer in charge will total the amount spent together with the judgment sum in form 41 of the schedule to the Rule and hand it over to the judgment debtor or his counsel for payment.

Attachment or Seizure- The writ is send by the registrar to the sheriff or the deputy sheriff in the division or district (i.e. the Chief Registrar) in which execution is to be levied for action. The deputy sheriff is charged with responsibility for execution but the bailiff act on her behalf.The bailiff executes the writ by seizing in any place within the judicial division or the magisterial district of the place of execution any goods or chattels of the judgment debtor except his wearing apparels and beddings or those of his family and the tool and implement of his trade to the value of ten naira. These excepted items are protected from seizure. Also liable to be seized are any money, bank note, bills of exchange, promissory notes, bounds,

specialties or securities for money belonging to the judgment debtor.[150]The amount of ten naira has become ridiculous in view of the prevalent depreciation of the value of naira in Nigeria. It is inconceivable that any tool or implement is still worth ten naira. In practice, there can be no longer exemption of tools and implements of trade as such items have gone above that price in value. Therefore there is need for the amendment of the Act in this regards

To attached or seized any property of the judgment debtor his full address must be written on the judgment certificate and writ of attachment to avoid enforcing against wrong persons or property. Most judgment creditors or there counsels go further to find out the judgment debtors properties since attachment of movable properties can be done at anywhere within the jurisdiction of the court. Vehicles parked by the road side or properties found on a different address but belongs to the judgment debtor can also be attached once there is sign writ against property of that judgment debtor. If any person has a claim on the properties attached, such person can come through interpleaders summons to claim his property. This will be discuss latter.

The bailiff is also empowered to seize any movable properly to which the judgment debtor is entitled but which is not in his possession or is subject to a lien or right of some other person to the immediate possession thereof and any shares in any public company or corporation to which the judgment debtor is entitled.[151] In the case of the types of movable property mentioned above, the seizure is effected under an order of the court prohibiting the person in

[150] . Sheriffs and Civil Process Act, Section 25.
[151] . Judgment (Enforcement) Rules, 0rder 5, Rule 1.

possession of or entitled to a lien or right to immediate possession over the property from giving it over to the judgment debtor.[152]

For shares, attachment is also by order prohibiting the person in whose name the shares may be standing from making any transfer, or receiving payment of dividends thereof and the manager, secretary or other proper offer of the company or corporation from permitting any such payment until further order of the court.[153]

The physical possession by the sheriff of shares certificates held by a shareholder in a public company is not necessary (Though it might be desirable) before being able to sell the shares under a writ of execution.[154]For purpose of judgment (enforcement) Rules, private companies are to be treated as public companies, so that shares in the former are attachable even though only shares in the latter are expressly stated to be attachable.[155]

If any person rescues or attempts to rescues any goods seized in execution or in any other way resists or obstruct the execution, he shall be liable, either or an order made in that behalf by the court that issued the writ on summary conviction to a fine not exceeding one hundred naira.[156] Any bailiff may take such a person in to custody with or without warrant, and bring him before the court.[157] The hundred naira fine as punishment for obstructing execution of judgment provided in the Act, also need amendment in looking at the prevalent depreciation of naira in Nigeria. The poorest person in Nigeria can afford such amount of money, and will

[152] . ibid ,0rder 5, Rule 2(a).
[153] . Judgment (Enforcement) Rules, 0rder 5, Rule 2(b).
[154] . *Bank of West Africa v. Fadoul* (1960) NNLR 15.
[155] . Ibid.
[156] . Sheriffs and Civil Process Act, Section 28.
[157] Ibid.

make no any impact on any Nigerian. Therefore, people will have no fair to obstruct execution of judgment if such amendment is not made.

Obstruction of court judgments is obvious, you cannot expect a person to release his property, knowing that if he does so, he is not getting them back. In such situation the enforcement officers try to exercise some kind of leniency and politeness to the judgment debtors, the reason for this, is that most judgment debtors are ordinary laymen, enforcement officer try make him understand what he is facing and the implications of acting to the contrary. The main essence of the execution is to get the judgment sum, if the judgment debtor pays, his property will not be attach. Manners of approach make a lot of impact in executing court judgments, it makes the judgment debtors pays the judgment sum and the execution fees. Where such is done but the judgment debtor prove to be stubborn an action will be taken against him accordingly.

A notice of attachment of all goods seized in form41 (i.e. notice of attachment) of the schedule to the rules is sent to the judgment debtor or left in the places where the attachment is effected.[158] When movable property attached is removed, the bailiff should give to the judgment debtors a sufficient inventory of it immediately after the removal.[159] Some judgment debtors refuse to accept the inventory of their properties attached because of anger, where such happen, the copy of the inventory is taken back to the court, anytime the judgment debtor come for it, it will be release to him.

a- Effects of seizure:

[158] . Judgment (Enforcement) Rules, 0rder 5, Rule 4.
[159] . ibid, 0rder 5, Rule 6 (2).

After an attachment by actual seizure or by order of court or notice and in the case of an attachment by notice any alienation without leave of court of the property attached, whether by sale, gift or otherwise is null and void. So also is any payment or dividend on share to the judgment debtor. Furthermore, the person making such alienation or payment shall be deemed to have committed a contempt of court.[160]The general property in the goods still remains in judgment debtor the owner and is not transferred to the sheriff because the sheriff act as an officer of thelaw.[161] As such the goods are not in his possession but in the custody of the law, that having been giving to him by special authority under the law and not by the act of the party.[162] The goods are in the *custodialegis* and the special property of the sheriff is given to him so that this *custodialegis* may be rendered safe.[163]

b- Custody of attached goods*:*

Until sale, the bailiff must deposit all seized movable goods in some fit place, they may also be left in the custody of a fit person approved by the sheriff to be put in possession by the bailiff or be safe guarded in such other manners as the sheriff may direct.[164]In the FCT High Court there are provisions for ware house at various divisions of the court for safe keeping of all attached properties. proper records of all the attached properties with date and specification of the properties attached, name of the officer that brought the properties, name of the case and suit number of the of the case to avoid mixed up with other property so attached. There is need for the provisions of additional warehouses, as the once on ground are not enough to accommodate all the attached properties. Most of

[160] . Judgment (Enforcement) Rules. 0rder 5, Rule 7
[161]. *Falode v. Lawal* (1962) WNLR 260.
[162] . Supra p.45.
[163]. Ibid.
[164].Sheriffs and Civil Process Act, Section 26.

the attached properties are kept outside, under the sun and rain. This lead to their destruction and will have no value when auctioning them. And the whole effort made by the judgment creditor to realize his sum, will be futile.

Seizure may be constituted by an indication of any intention of the bailiff to take possession without actual removing the goods.[165] In some cases, he may only get what termed a walking possession, whereby he obtained the judgment debtors agreement that the judgment debtor should keep the goods and not remove them.[166] This is where moveable properties are so difficult to be moved, they need professionals to dismantle them e.g. MTN Mass.

Any bills of exchange, promissory notes, bonds, specialties or other securities for money seized in execution as security for the amount to be levied by exchange or for such much of it as has not been levied or raised are held by the sheriff for the benefit of the judgment creditor who may sue in the name of the judgment debtor or in the name any person in whose name the judgment debtor might have sued for the recovering of the sum secured or made payable thereby when the time for payment there of arrives.[167]

C_Pending sale:

After the goods have been seized and kept in proper custody, the sheriff is then set for their sale. But in the interim any of the following situations stated here under may arise.

i – The judgment debtor may, after attachment of his goods but before their actual sale, pay or cause to be paid or tendered to the registrar of the court from which the writ is issued or to

[165] . *DEBS & Co v. MSSRI* (1961) All NLR 727.
[166] . *Llyods & Scottish finance Ltd v. Modern Care & Caravans Kingston Ltd* (1966) 1QB 764*; Watson v. Murray &Co* (supra)p.33.
[167]. Sheriffs and Civil Process Act, Section 27.

the bailiff holding the writ, the judgment debt and costs as endorsed on the writ, or part of the debt as the judgment creditor may agree to accept in full satisfaction together with the bailiff fees already accrued. Where this happens, the execution is superseded and the seized properties discharged and set at liberty.[168] Since the main essence of seizure is to sell and get the judgment sum, and judgment debtor have paid, then the property of the judgment debtor will be released to him.

ii – If it appears to the satisfaction of the court upon an inquiry to that effect made on the application of judgment debtor that he has made a full surrender and disclosure of his property in the prescribed manner, and that he is unable because of unavoidable misfortune to satisfy the judgment and that he has not been guilty of any misconduct cognizable under section 66 of the act, and that his property ought for released from attachment, the court may, in its discretion stay any writ of execution issue in the proceedings for such time an upon such terms as it thinks fit and so from time to time until it appears that the cost of inability has ceased.[169] The onus of prove of all the forgoing circumstances lies upon the judgment debtors.[170]The application is made by motion on notice to the judgment creditor.[171] Such an application is the only remedy a judgment debtor who has not given any notice of appeal against a judgment in respect of which execution is sought to be levied has. He may apply under these provisions to the court for a stay of the issue of execution of any writ if he can prove the circumstances mentioned therein.[172]

[168]. ibid ,Section 22(2), alsoJudgment (Enforcement) Rules, 0rder 4, Rule 18.
[169] . Sheriffs and Civil Process Act, Section 23.
[170] . Ibid.
[171]. Judgment (Enforcement) Rules, 0RDER 3, Rule1.
[172]. *Inter-contractor v. U.A.C.* (1988) 2NWLR 303 at 323.

iii –A Third party may make acclaim to or in respect of any property attached for execution in which case interpleader proceedings will ensure. These proceedings will be discuss latter. Execution is then suspended until the conclusion of the proceedings.

iv – The Landlord of the premises in which the good are seized may claim the rent of the premises in arrears at the date of the seizure at any time within five days next following that date, or before the removal of the goods. The landlord does this, by delivering to the bailiff executing the writ of a claim in writing signed by him or his agent, stating (a) the amount of rent claimed and (b) the period in respect of which it is due.[173] Where such claim is made the bailiff shall seize more goods to satisfy the landlords claim. No part of the goods seize will be sold within five days after the date of this further distress unless the goods are of a perishable nature or the person whose goods have been seized so request in writing[174].

On the ultimate sale of the goods, the claim of the landlord is satisfied from the proceeds after providing for the cost of an incidental to the sale. The claim takes priority over the judgment debt, although the landlord should not be paid more than four weeks rents in the case of weekly tenancy, or the rent of two terms where tenement is let for any other terms less than a year, or in any other case, one year rent.[175]

But in the FCT High Court, where the landlord obtain a judgment against his tenant for rent arrears, such areas may be recovered by writ of attachment and sale of goods of the tenant. The same procedure for the attachment of movable property applied. But in a situation where original tenant sublet the house to another person and there is a writ of attachment against the original tenant for rent arrears, such writ will only be enforceable against the

[173]. Sheriffs and Civil Process Act, Section 35(1).
[174]. ibid Section 35(2).
[175] . ibid, Section 35(3).

original tenant not on the subtenant whose name was not on the writ of attachment. But where there is warrant for possession such will be enforceable against the sub tenant, i.e. ejection of such sub tenant would be carried out.

v. The judgment debtor may dispute the amount alleged to be remaining due under the judgment. In such a case, he applies to the court for a stay of execution and an inquiry as to what amount, if any, that remains due under the judgment. The court may grant the application for stay upon such terms, including terms as to security to be given by the judgment debtor. As it thinks fit. It may then order and conduct an inquiry, on notice to the judgment creditor as the amount that remains due under the judgment.[176]

vi – The judgment debtor may apply for order for installment payment and, if the application is granted no writ of execution shall be issued until after default in payment of some installment. Here the court sign a writ of attachment against the judgment debtors property, which he either pays the whole judgment debt and execution fees or his properties will be attached.

d-Sale: The sale of the seized goods shall not take place until the expiration of at least *five days* next, following the day of their seizure unless the goods are of perishable nature or the person whose goods are seized so request in writing. The court may however, if it thinks fit, direct that the sale be postponed for anytime not exceeding *twenty eight days* after attachment.[177]

The provisions of five days in the rule was apply in the F.C.T high court, only for the judgment creditor or his counsel to make an application for sale not for the actual sale to take

[176] . Judgment (Enforcement) Rules, 0rder 5, Rule 8.
[177].Sheriffs and Civil Process Act, Section 29(1) also F.C.T High Court Practice Direction (supra)p.30.

place. Where there is no such application, the properties are left in the ware house until application is made, which lead to the prolong stay of the property, destruction, and depreciation of their value. But now there is practice direction by the Honorable Chief Judge of the High Court I. M. Bukar, 2013 that such properties should be auction after the expiration of five days without waiting for any application from the judgment creditor or his counsel.

Where the judgment debtor is arrested and detained in custody, no sale of any portion of his property attached in execution shall be made until the expiration of *one month* after his being so arrested, and at least *fifteen days*' notice shall have been given to him specifying the property so taken and intended to be sold. But the sale may take place at any time in the ease of perishable articles or where the judgment debtor has given his consent thereto in writing.[178] After it has commenced, the sale may be adjourned if it cannot be completed for want of time, for a period of not more than *three days* and so on as may be necessary. It takes place between the hours of seven o'clock in the morning and eight o'clock in the evening.[179]

In practice, in the FCT High Court Abuja, execution against movable property takes place between 5am – 11pm, depending on the nature of the attachment. Some judgment debtors leave their houses around 5am, and for the enforcement officer to attach their vehicle (as the only valuable property) of the judgment debtor, he need to get to the venue as early as possible before the judgment debtors leaves his house. Writ of attachment is only use to attach property, it cannot be used to break into the house of the judgment debtor and attach his property since it is not a warrant. The only way to attach in this situation is to target the

[178]. Judgment (Enforcement) Rules, 0rder 7, Rule1.
[179]. Sheriffs and Civil Process Act, Section 29(3).

time the judgment debtor leave his house. This is done by the judgment creditor or his counsel not the enforcement officer. Where the writ is against the Government or Banks, the execution takes a whole day because of the bureaucracy. Therefore, the time provided by the Act, needs to be amended or there should be practice direction in this aspect of the law. If not, so many writ of attachment would be left unenforced.

The sale is by public auction where the value of the goods exceeds forty naira. The property is knocked down to the highest bidder for ready money. The purpose of attachment and sale of judgment debtor property is to satisfy the judgment sum .[180]On application of a person, the court may order private sale, before making the application the person shall obtain from the registrar a list containing the name and address of every judgment creditor which are then put on notice of the motion for application.[181] At the hearing the applicant must also produce the list to the court. A copy of any order made on the application is sent to the deputy sheriff in the place where the sale will be held.[182]

Therefore all goods, chattels or other movable properties which are to be sold under execution shall be advertise on the court's public notice board at least three days preceding the sale and all such sale shall be by public auction. Notice shall indicate the venue, date and time of the sale.[183]

Unless application is made to the court for the service of a licensed auctioneers, sales of property by auction is conducted by a bailiff under the supervision of a deputy sheriff.[184] In

[180]. Ibid, FCT High Court practice direction for enforcement Department, Jerr A.(2014)*Modern Civil Procedure Law and Practice in Nigeria,* Vol. II, Pearl Publisher,Portharcourt,Nigeria,p1705.
[181] . 0rder 7, Rule 3 Judgment (Enforcement) Rules.
[182]. Ibid.
[183] . F.C.T High Court practice direction (supra) p.51. also ibid 0rder 7,Rule 4. `
[184] . ibid, 0rder 7,Rule 2 ; *Hady Smath v. Aisha Buhari* FCT/HC/CV/20/201/2007 (unreported).

the absence of an order of court authorizing it, sale by auction by an auctioneer is an irregularity which may lead to the setting aside of the sale.[185]

Where sale takes place, and the properties were not sold, the judgment creditor or his counsel apply for another date to be fixed for sale. The Act and the Rules of the high court did not make any provision as to how to go about unsold, over stayed attach property, and property that are subject of appeal (since most appeal takes years before their final determination). There is need for such provisions so as to avoid congestion in the ware house and depreciation of value of the attached property, that any unsold, over stayed attached property and property that are subject of appeal, should be auctioned and the money be deposited into the high court account pending the determination of the appeal.

e-Title conferred by the sale:

where any goods in the possession of a judgment debtor at the time of seizure by a sheriff or deputy sheriff or other officer charged with the enforcement of a writ, warrant or other process of execution are sold by such sheriff, deputy sheriff or other officer without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to those goods. The purchaser's title will be affected if there had been claim made to the good. The purpose of advertising the sale is for any such possible claim. If there is a claim, the sale ought not to be affected until the claim is adjudicated upon by the court.[186] It the duty of the enforcement officers to make sure there is no any interpleader summons against such property before sale.

[185] . *Management Enterprises Ltd v. Kano Contemporary Ltd* (1966) NMLR, 207.
[186].Sheriffs and Civil Process Act, Section 16.

But where the judgment debtor happens not to be the true owner of the good, the latter may maintain an action against the former for money had and received.[187] Therefore, if a certain property which is attached under execution by way of *fifa* turns out to be in any way encumbered, the purchaser buys subject to that charge or encumbrance. [188]Thus, where a mortgaged property is attached and sold pursuant to a writ of *fifa* the purchaser takes subject to the mortgage. [189] It is therefore, up to a purchaser whether by private treaty or by auction to satisfy himself as to the "right, title and interest" of the judgment debtor in the property he is buying and if he buys without doing so, he cannot complain if he is ousted by a third party proving a better title.[190] A receipt will be issued to the purchaser in his name and address. The receipt will carry the name of the parties in the case where such attachment was made, the suit no, date and the signature of the officer in charge of the sale.

f-Delivery to purchaser:

Goods and chattels actually seized from the judgment debtors and those to the immediate possession of which he is entitle, are delivered to the purchaser as soon as they are sold and paid for at the auction.[191]Where the properties consist of shares in any public company or corporation, immediate physical delivery is not possible. The purchaser has to apply to the court to make an order prohibiting the person in whose name the shares are held from transferring them to any person except the purchaser or receiving any dividend thereon and also prohibiting the manager, secretary, and other officers of the company or corporation,

[187] . *Mbanugo& others v. U.A.C. (of Nig)Ltd*. (1961) All NLR 775.
[188] . *Ghana Commercial Bank v. Chandrian* (1960) AC. 732.
[189] . *Kasunmu v. Scott & others (*1967) NMLR 318.
[190]. *Egbeyemi V. Ollivants Co. Ltd* (1939)5 WACA 147.
[191] . Sheriffs and Civil Process Act, Section 31.

from permitting any such payment to any person except the purchase.[192] But person and the company or corporation should be made parties to the motion.

In the case of sale of negotiable securities that were actually seized, such securities will be delivered to the purchaser who may in turn apply to the court to order the effectuation of their formal transfer, if necessary.[193]Where the property sold is subject to a lien or right of any person to the immediate possession there of delivery to the purchaser is made by the sheriff giving a notice to the person in possession prohibiting him from delivery possession to any other person except the purchaser.[194]

g -Disposal of proceeds of sale:

After sale, the sheriff or bailiff who carried it out returns the proceeds executed by him to the court and submits an account showing the amount realized from the sale, the amount due for sheriffs, bailiff's, and appraisals fees and expenses, and the balance which he pays into court.[195]Where the money is a gross sum, payments out of it are made in the following order:

i. Payment to the sheriff for any amount due and expenses for sheriff's, bailiff's and appraisers fees and expenses;
ii. Payment to the auction auctioneer, if any of the prescribed fees and expenses of sale and
iii. Payment to the judgment creditors of the amount to be levied together with costs paid by him subsequent to the issue of the writ, if any and

[192] . Judgment (Enforcement) Rules, 0rder 7, Rule 11.
[193] . ibid, 0rder 7, Rule 12.
[194] . Sheriffs and Civil Process Act, Section 36.
[195] . Judgment (Enforcement) Rules, 0rder 7, Rule 5; 0rder 1, Rule 13.

iv. Payment of the balances to the judgment debtors.[196]

Therefore, judgment creditor should be inform of the fact that proceeds of sale have been paid into court by the registrar and he should not pay out any amount to the judgment creditors or any other person to be paid until a demand for the money has been made by the judgment creditor or other person. Judgment debtor is entitle to a refund of any fund remaining after deduction of judgment sum and cost of execution.[197]

In the FCT High Court proceeds of sale is normally paid to the judgment creditor direct or to his counsel as the case may be. The proceeds of sale is deposited into high court account or interest yielding account depending on what the judgment provide. But the judgment creditor or his counsel make an application for the release of the money. The application will be made through the director, enforcement department to the chief registrar, for approval. After approval, a cheque will be written in the name of the judgment creditor or his counsel (if there is any written authority by the judgment creditor). Note that, payment is only made if there is no any motion for stay of execution or notice of appeal in respect to such matter.

3.2.2.Procedure for Application for Issue writ of *fifa* against Immovable Property-

Immovable property of a judgment debtor may be seized and sold in satisfaction of the judgment just like his chattels and other movable goods, but 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.[198] the judgment creditor apply for inventory of the properties attached and goes

[196] . ibid ,0rder 1, Rule 5(c).
[197] . ibid, 0rder2, Rule 5.Hon. Justice Oludotun A.O.(2013)*CIVIL LITIGATION A Quick Reference, Guide to Substantive Law and Procedure,* Supreme Court of Nigeria.p.1705
[198] . Sheriffs and Civil Process Act, Section 44.

back to the court, to prove to the court that properties attached are insufficient to pay the judgment debt. This is to show the court that there is attachment against the moveable properties of the judgment debtor which are insufficient to pay the judgment debt.

Where a building is owned or occupied by a judgment debtor and he is not entitled under customary law to alienate it or the right to occupy it but he is entitled to remove the materials used in its construction, his right, title, or interest in such building, shall not be sold without the leave of court first obtained. In *Majekodunmi v. Tijani*.[199] The plaintiff obtained judgment against the defendant and attached a property which was part of the family property allotted to the defendant for his occupation only under customary tenure, there having been no partition of the family property. It was held that the defendants' interest in the property in question was not alienable by him or attachable by his judgment creditor. Also, where property is a family property and the defendants is sued in respect of it in his personal capacity and he defends in that capacity, a purchaser who bought the property in sale under a writ of execution cannot claim ownership of it. [200] But the interest in property of the judgment debtor who is in the position of a tenant in common is attachable under a writ of fifa.[201] So also is a widow's one third interest in the estate of her deceased intestate husband distributed under section 36 of marriage ordinance of 1941.

A house or other building as well as the land on which it stand it dealt with as immovable property and may be taken in execution accordingly.[202] any house or other building on land which is not the property of the owner of the house or the building or land held under

[199] . (1932) 11NLR 74.
[200] . *Adesola v. Giwa* (1942) 16 NLR 92.
[201] . *Saibu v. 1960* (1941) 16 NLR 25.
[202] . Sheriffs and Civil Process Act, Section 46(1).

provision of the land and native rights ordinance or the native lands acquisition ordinance is similarly dealt with subject to the provisions of the said ordinances and the right, title and interest of the owner thereof may be sold in execution.[203]

Only the High Court can issue writ of *fifa* against an immovable property. A Magistrate Court is district in court, in case of northern states, cannot issue it.[204] Where judgment was given in a magistrate's or district court and judgment creditor want to enforce it against immovable property of the debtor, he will first apply to the court that gave the judgment for the transfer of proceeding subsequent to judgment to the High Court.[205]The application for the transfer is made in writing to the judge in the judicial division within which the magistrate's court is. It is prepared in the duplicate and files in the magistrate court for eventual transmission to the judge. The magistrate forwards the original to the registrar of the high court along with his own views on the application. If the application is granted, the judge makes an order of transfer directed to the magistrate. Upon the receipt of the order, the registrar of the magistrate's court certifies all the proceeding that have taken place in his court since the judgment and reunites a record of them to the high court.

Application for writ- The judgment creditor applies to the court for the issue of writ of fifa against immovable property by motion on notice to all the interested parties.[206]The affidavit in support must show

(a) What steps, if any have already been taken to enforce the judgment and with what effect; and

[203] . ibid ,Section 46(1).
[204] . ibid, Section 44.
[205] . Judgment (Enforcement) Rules, 0rder 2, Rule 27 (1).
[206] . *Giwa v. Nig. Loan & Mortgage Co. Ltd* (1946) 18 NLR 81.

(b) What sum now remains due under the judgment and

(c) That no movable property of the judgment debtor, or non-sufficient to satisfy the judgment debt, can, with reasonable diligent be found.[207]

The affidavit must depose to the fact that will enable the court to come to the conclusion that sufficient movables of the debtor cannot be found within the state to satisfy the debt.[208]

The judgment creditor must, finish what has been done to find the judgment debtors movable properties and the court will then decide whether not reasonable diligence has been shown.[209]*In Leedo v. Bank of the north*.[210] The Supreme Court affirmed that the judgment debtor should be put on notice of the application as there are many things the court has to satisfy itself about the court. Further held that from the nature of the evidence upon which the court must satisfy itself before a writ of attachment and sale is ordered to issue, the civil rights and obligations of the judgment debtor must obviously come up for determination and such a determination cannot be made behind his back without breaching his constitutional right of fair hearing under S. 36 (1) of the constitution. Because the application for the issue of the writ of *fifa* against immovable properties of the judgment debtor in the case was made exparte, the leave granted thereby was held to be a nullity and the attachment and sale of those properties pursuant to that leave were also held to be null & void.

It is not necessary for the judgment creditor to avert that the judgment debtor owns specific immovable property or to inquire into the title to the property.[211] once he has establish that

[207] . Judgment (Enforcement) Rules, 0rder 4, Rule 16 (2).
[208] . *Osunkwov. Ugbogbo* (1966) NMLR 184.
[209] . *Mutual Aid Society Ltd v. Ogonade* (1957) NRNLR 118.
[210] . (1998)7 SCNJ 328, also *Bayero v. FMB*(1998) 2NWLR 509.
[211] . *Koya v. Lawen* (1958) WRNLR 1.

the judgment remains unsatisfied and that there is no movable property to satisfy the debt, he is entitled to apply to the court for a writ to issue against any immovable property that the judgment debtor may have without naming it.[212]No evidence on the issue of ownership of property ought to be allowed at the hearing of the application, this is done only on interpleader summons. But under the sheriff and civil process Act; it is mandatory that before levying execution, the judgment debtor must be the owner of such immovable property as leave of the court to so levy, is not granted as a matter of course. Where he finds that the property to be attached does not belong to the judgment debtor, although he has an equitable interest in it, no order for attachment of the property will be made unless in circumstances which will in no way affect the legal owner or cause him inconveniences or expenses. If upon the hearing of the application it appeals to the court that a writ of *fifa* may lawfully issue against the immovable property, the court will make an order accordingly.[213] the judgment creditor appeals to the registrar for issue, stating the number and title of the sued, the name of the judgment debtor, the date of judgment and amount for which execution is to be levied. The writ is issued in form 38 first schedule to the Rules.[214]

a-Attachment of immovable:

This is effected by the delivery of a notice of attachment in form 41 in the first schedule to the rules to the judgment debtor or by leaving it at the place where the attachment is effected and, unless the court otherwise orders by pasting in a conspicuous place on the land. A notice in form 40 in the same schedule prohibiting all persons from receiving the land by purchase,

[212] . *Coker v. Olusola* (1968) NMLR 79.
[213] . Judgment (Enforcement) Rules. 0rder 4, Rule 16 (2).
[214] . ibid ,0rder 4, Rule 16 (8).

gift or otherwise. [215]Where the immoveable properties is occupied by judgment debtor or others, such persons shall be ejected from that property, to have vacant possession first, because property cannot be sold where it is occupied.

b-Sale:

No attachment of immovable property shall be sold in execution until the expiration of fifteen days next following the day on which the property has been attached unless the judgment debtor so request in writing.[216]The sheriff may, if he is unable from want of time to complete the sale, adjourn the same for a period of not more than three days, and so on as often as may be necessary.[217] The sale shall be made in the principal court house of the division, in which the property is situated, or on the land attached, or at such other place as may be appointed by the sheriff.[218]Notice of the day and hour of sale shall be published fourteen days at least before the day of such sale by being posted (a) upon the door of the principal court house of the division which property is situated; (b) in a conspicuous place upon the land attached; and (c) if the sale is to take place elsewhere than at such other place also; and (d) if the court so directed, in a newspaper published in Nigeria.[219]

The sale shall be publicly advertised by the sheriff on, or during three days next preceding the day of sale.[220] The advertisement would help in getting better prices.[221]Every sale shall take place between 7:00am and 8:00pm.[222] In the FCT High Court the sale takes place

[215] . ibid, 0rder 5, Rule 3 & 4.
[216] . ibid, 0rder 7, Rule 6 (1).
[217] . Ibid.
[218] . Judgment (Enforcement) Rules , 0rder 7, Rule 6(2).
[219] . ibid ,0rder 7, Rule 6 (4).
[220] . Ibid.
[221] . *Etim and Ano. v. the Queen* (1964)1 All WLR 38.
[222] .. Judgment (Enforcement) Rules, 0rder 7, Rule 6 (4).

between 7:00am to 6:00pm. The sale is by public auction at which the property is knocked down to the highest bidder for ready money.Before the sale, the execution Departments have the duty to make sure that there is no interpleader summons, appeal and stay of execution before the sale of any immovable properties.

c-Title acquired by purchaser:

If after twenty one days from the date of the sale, there is no application by anyone to set aside, the sale becomes absolute, where this happens the court prepares under section 50 of the Act a certificate of title under the signature of a judge and grants it to the purchaser to the effect that he has purchased the right, title of the judgment debtor in the property sold.[223]

But if there are other statutory requirements under any other enactment for the transfer of such right, interest or title, such as consent or approval of transfer by the governor of a state, or relevant, commissioner, then such requirement must also be fulfilled before the right, interest or title of the judgment debtor can devolve on the purchaser.[224] In the FCT High Court, a letter will be written to the FCT minister notifying him of the sale and to register and issue certificate to the purchaser as the new owner of such immovable property. But if after the sale and grant of certificate or title, the property still remains in the possession of judgment debtor or of some person on his behalf, or a person claiming under a title created by the judgment debtor for subsequently to the attachment of the property, the purchaser may apply to the court to order delivery of the land to him by putting him or his agent in

[223] . Sheriffs and Civil Process Act, Section 50.
[224] .*Umaru Danjara v. Mohammed Bia*(1965) NMLR 455.

possession of it or to order the removal of the person in possession on that persons refusal to vacate the property.[225]

This foregoing provision is intended for the summary ejection of (i) the judgment debtor himself if in possession, (ii) the persons who are in possession on behalf o0f the judgment debtor such as his wife, children, servant and (iii) some person or persons claiming under a title created by the judgment debtor subsequently to the attachment of the property.[226]A person who resists or obstructs the purchaser in obtaining possession of the property commits an offence and is liable on conviction to a fine not exceeding one hundred naira.[227]The same thing goes to a tenant occupy the property in dispute where by such tenant will be ejected.[87] Fine of less than hundred naira as punishment for obstructing purchaser in obtaining possession of property purchased, today, seems to be obsolete. There is need for the amendment of this part of the Act to reflect the realities of modern times.

d-Setting aside sale for irregularity:

A sale of immovable property may be set aside at any time within twenty one days from the date of the sale, by applying to the court.[228] But no sale shall be set aside on the ground of such irregularity unless the applicant proved to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity.[229]The application is by motion on notice and must be made within period of twenty one days if not the sale shall be deemed to be absolute.[230]The irregularity contemplated here is one arising in the conduct of sale and not

[225] . Sheriffs and Civil Process Act, Section 51.
[226] . *Ayoadev. Adeubigbe& others* (1965) NMLR 217.
[227] . Sheriffs and Civil Process Act, Section 52.
[228] . Sheriffs and Civil Process Act, Section 47.
[229] . *Akpunonu v. Beakart* (2000)7 SC (pt.1) 49 at 54.
[230] . Sheriffs and Civil Process Act, Section 48.

one arising before sale, e.g. in the attachment.[231] An execution sale will not be set aside merely because the judgment in respect of which the execution was levied is set aside.[232] if the complaint is that no valid sale had taken place because the judgment debtor had no title to the property sold, the remedy available to the party claiming ownership of the property would not be an order, setting aside the invalid sale but a claim for a declaration of title to the property and or damages for trespass depending on what action the supposed purchaser had taken to give effect to the purported sale.[233]

If the application is dismissed the court makes an order confirming the sale but if it is granted, an order setting aside the sale is made.[234] Such order will be sent to the chief registrar of FCT High Court and subsequently to the enforcement department as the case may be. Where the application is granted, the purchaser is entitled to receive back any money deposited or paid by him on account of the sale, with or without interest to be paid by such parties and in such manner as the court may consider proper in the circumstance.[235]

3.2.3 Sheriff Interpleader Proceedings

Sheriff interpleader proceedings arise when sheriffs seize goods under execution and a third person raises a claim that the goods belong to him and not to the judgment debtor. In order to protect himself from liability to either the judgment creditor at whose instance the seizure is made or the third person asserting ownership to the goods, the sheriff causes interpleader proceedings to be commenced within the division or district of which the goods are for the

[231] . *Orisawale v. The Deputy Sheriff* (1962) WNLR 129.
[232] . *Odoye Vv. Standard Bank of West Africa Ltd &Ano*. (1971)1 NMLR 58.
[233] . 1bid.
[234] .Ibid, Section 48.
[235] . Ibid,Section 49.

determination of the issue of proceedings to determine whether the property belong to the judgment debtor and therefore, can be seized or to the claimant.[236]

The third party's claim may not necessarily be that he owns the goods. He may claim that he has a charge or other interest on them if the claim of ownership succeeds, the goods are released to the third party, but if he establishes any other interests short of ownership the court may order the goods to be sold, nevertheless, with part of the proceeds apportioned to the third party for his interests claim in respect of attached is made by the claimants to the bailiff holding the writ or to the sheriff.[237] The claimant notifies the bailiff or to the sheriff or the deputy sheriff of his alleged right in the property specifying its name. The sheriff or his deputy in turn informs the registrar of the high court or of the magistrate's court if the judgment was by such a court. Either of these court's must be one having jurisdiction over the division or district, as the case may be in which the property is situated.[238]On receipt of the information, the registrar send notice of the claim to the judgment creditor in form 42 in the first schedule to the rules and a notice to the claimant in form 43 of the same schedule. By the notice, the demand is required in accordance with section 33 of the Act to deposit with the sheriff the amount of value of the good claimed or the sum if any, which the sheriff is allowed to charge as cost for keeping possession of the property until the court's decision on the claim or give the sheriff in the prescribed manner, security for the value of the property claimed which is agreed or titled fixed by appraisement. Where such happen, the sheriff may release the property to him pending the result of the interpleader proceedings. Such security is against any loss or domination in value of the property in the interim. But in

[236] . *Nwekeson v. Onuigbo* (1991)3 NWLR 125 at 131.
[237] .Judgment Enforcement Rules 0rder 6, Rule 1.
[238] .Ibid 0rder 6, Rule2 .

practice in the FCT High Court such property is kept in the custody of the court until the out came of the interpleader, which will determine the right person the property should be release to.

If the judgment creditor admits the claim or request the sheriff to release the property, the sheriff should discontinue the seizure, but if he does not admits the claim, the sheriff should unless the claimant withdraw his claim, apply to the registrar for the issue of interpleader summons calling the judgment creditor and the claimant before the court for trial of the claim. The issue of these summonses operates as a stay of any action brought in any court in rest of the claim or any damage arising out of the execution of the writ.[239] This also operate as a stay of execution, the claimant should notify the bailiff holding the writ or the sheriff of his claim over the property before the property is sold, for once sale has taken place, the sheriff becomes *functus officio* and the proceeding by way of interpleader no longer remains open to the claimants, he is then only left with his ordinary remedy of prosecuting his claim by regular action.[240] the summons are respectively in forms 7 and 8 in the schedule to the Act, the interval between the service and the return date shall not be less than fourteen clear days.

Therefore it is necessary that before conducting any sale of movable property, there must be no any interpleader summons against such property and that property should not be subject of appeal or stay of execution. The proceeding are between the claimant who, for the purposes thereby is regarded as the plaintiff, and the judgment creditor, regarded as the

[239] . Sheriffs and Civil Process Act, Section 34(2).
[240]. *Shella v. Oshua* (1932)11 NLR 43.

defendant.[241]The sheriff is not a party unless where any of the parties claims damages from him arising out of the execution. [242]The position is also the same in respect of the judgment debtor, he is not made a party unless there is a different claim against him by either of the two parties.

After the service on him of the interpleader summon the claimant files in the court the copies of the particulars of his claim which should include his full name, address and occupation, the particulars of the property he claims and the grounds of his claim.[243] The particulars of claim must be filed within such reasonable time before the retuning date as the time service permits. Copies of the particulars are sent to the sheriff and the judgment creditor. If the claimant fails to file the particulars, his claim may lapse. The court may however, if it thinks fit, hear the proceedings without them. The judgment creditor does not have to file any document in reply to the claimants' particulars. But if he claims damaged against the sheriff arising out of the attachment, he shall within such reasonable time before the return date as the time for service permits, file in court particulars of his claims stating the amount and the ground thereof. One copy of the particulars is served on the sheriff through the registrar.[244]

If before the return date, the claimants informs the registrar that he withdraws his claim or the judgment creditor informs the registrar that he admits the claimant's title, the registrar shall notify the withdrawal or admission, as the case may be, to the other party.[245]Where in these proceedings a claim for damages is made, the person from whom the damages are claimed may pay money into the court in satisfaction of the claim. Such payment is made in

[241] . *Olatunde v. O.A.U* (1998)4 SCNJ 59 at 70.
[242] . Judgment (Enforcement) Rules 0rder 6, Rule 11 & 12.
[243] . ibid, 0rder 6, Rule 11.
[244] . Judgment (Enforcement) Rules 0rder 6, Rule 12.
[245] . ibid, 0rder6, Rule 7.

the manner and has effect as of the proceedings were an action and the person claiming damages were a defendant.[246]

At the hearing, the claimant bears the burden of proving his ownership.[247]In a situation where the onus of proof does not lie on the claimant, but on the judgment creditor, the latter may be deemed to be the plaintiff.[248]On the hearing of the summons, the court adjudicates upon the claim and also adjudicate between the parties or either of them and the sheriff upon any claim to damages arising out of the execution.[249] It then makes any such order in respect of the claim and the costs of the proceedings as it think fit. [250] The order of the court made upon the hearing should also contain directions by whom any court fees have to be paid and how any money in court should be applied.[251] The decision of court in a sheriff interpleader proceeding is a final decision.[252]After all the proceedings, order granted by the court should be serve to the Chief Registrar and the enforcement department, for the purpose of release of the property or sale of the property as the case may be.

3.3. Garnishee proceedings

This is another method by which a judgment for payment of money may be enforced. By the proceedings a judgment creditor may attach or garnishee debts which another person owes to the judgment debtor in satisfaction of the judgment debt. This is paid to the judgment creditor either voluntary or by the order of court. For the purposes of the proceedings the third person indebted to the judgment debtor is called the garnishee, the judgment creditor is also referred

[246] . ibid, 0rder 6, Rule 13.
[247] . *Kala v. Patiskum* (1998)1 500y 143 at 150. Also *Okoli v. Morecab finance (Nig) Ltd* (2007) All FWLR (pt 360)1 164 at 1181 Para. A-b.
[248] . *Jinadu v. Babaoye* (1966)2 All NLR 241.
[249] . Sheriffs and Civil Process Act, Section 34(1).
[250] . 1bid
[251] . Judgment (Enforcement) Rules, 0rder 6, Rule 15(1).
[252] . 0rder 6, Rule 15(2), Judgment (Enforcement) Rules.

to as garnishor and the judgment debtor constitute the parties to the proceedings. Here, the test is whether any sum certain is due and payable by the garnishee to the judgment debtor.[253]

The debt must be certain in amount and the judgment debtor must have an immediate legal right to it. Untaxed costs cannot be attached,[254] but where the costs are assessed and therefore definitely ascertained, they are attachable[255]. Also a claim under a policy of insurance being or adjudicated claim for money cannot be attached[256]. A claim by the judgment debtor against the garnishee but which has not been adjudicated is not an attachable debt[257]. The debt must be a present and existing one owed to the judgment debtor.

The amount at the judgment debtor's credit in his savings and current account is property of the judgment debtor consisting of a debt, the bank being the person indebted, and the amount could be attached by garnishee proceedings. For a salary to be attachable it must be due and payable[258]. A pension for past services is attachable[259]. Unless by the provisions of a statute, its attachments is not permitted[260]. The debt owed to any two or more defendants jointly liable to the judgment creditor under a judgment can be garnished.[261]Where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity, consent of the attorney - general of the federation or of a state accordingly as the public officer in the public service of the federation or of a state,

[253] . *Osibamowo v. Shadeko* (1967)1 LR 7.
[254] . *Widgery v. Tepper* (1977) 6CH.D. 364.
[255] . *Nusi v. Dosunmu* (1937)13 NLR 173.
[256] . *Miller Broken Ltd v. Sassin* (1926)7NLR 45.
[257] . *Gold cost industrial corporation Ltd. v. Salawu* (1953)14 WACA 284.
[258] . *Lagos stores Ltd v. Pedro stanma* (1929)9 NLR 96 .
[259] . *Willcock v. Terrel* (1878)3 ex.D232.
[260] . *Lucas v. Harris* (1887)18 QBD 127.
[261] . *Miller v. Mynn* (1859)28 LJQB 324.

respectively, must first be obtained before the order of attachment may be made and where such money is in *custodialegis* the leave of the court is necessary for the same order.[262]

It is observed that these section of the act is repugnant to section 36(1) 1999 constitution which gives every individual a right to fair hearing. It can also be said that this section has sought to curtail the judicial powers vested in court by virtue of Section 6 (1) (b) of the constitution. It is believed that Section 272 (1) of the 1999 constitution has given the High Court of the state, unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal process involving or relating to any penalty, forfeiture, or other liability in respect of an offence committed by any person. The Act cannot divest the court of such powers. Therefore, the section of the Act is obsolete because whenever there is any conflict between any rule or law and the constitution, the constitution prevails and the law is void to the extent of inconsistency. Consent of the Attorney General is now not applicable.

"Public officer" here applies to a public officer who holds office in the public service of the federation or of the state.[263] In the absence of such consent or leave garnishee proceedings are incompetent and may be set aside.[264] But the irregularity may be regularized by leave or consent subsequently obtained.[265] The garnishee proceedings cannot be commenced if the debt has not become due to the judgment debtor. The garnishee must be indebted to the judgment debtor or have custody of his money, the court then orders him, at the instance of

[262] . Sheriffs and Civil Process Act, Section 84.
[263] . *Barclays Bank v. Baderinwa* (1962) LLR 33.
[264] . *Ojo v. Williams* (supra)p.26.
[265] . *Fafunke v. John* (1933)11 NLR 106.

the judgment creditor, to pay to the judgment creditor or from the credit in the account of the judgment debtor with the third person.[266]

3.3.1 Procedure for garnishee proceedings

The garnishee must be indebted to the judgment debtor within the state and be resident in the state in which the proceedings are to be brought.[267]The words "within the state" have not been defined in the act. It is however, submitted that "within the state" means the state in which the judgment or order to be executed was given.The question whether garnishee proceedings can be taken against a garnishee in another state in which a judgment has been registered for execution under Part vii of the Act has not been specifically provided in the Act or the rules, from the provision of section 105(2) of the Act, which state that"From the date of registration, the certificate shall be record of the court in which it is registered, and shall have the same force and effect in all respects as a judgment of that court and the like proceedings may be taken upon the certificate as if the judgment had been a judgment of that court".[268]

The proceedings should be brought in any court in which the judgment debtor could under the rules of court sue the garnishee in respect of the debt.[269] The court may not necessarily be the one that gave the judgment. It could be a magistrate's court and in that case it does not matter that the debt exceeds the jurisdiction of the magistrate.[270]The judgment creditor commences the proceedings by filling in the registry of the appropriate court an affidavit in form 25 in the first schedule to the Act. this is a statutory affidavit and the matters to be

[266] . *S.T.B. Ltd v. Contract resources (Nig) Ltd* (2001) 6W.W.L.R (pt 708)115 at 123
[267] . Sheriffs and Civil Process Act, Section 83 (1).
[268] . Judgment (Enforcement) Rules, 0rder 8, Rule.3 (1) (b).
[269] . ibid, 0rder 8, Rule.2(a).
[270] . ibid, 0rder 8, Rule.2 (b).

sworn to in it by the judgment creditor are, concisely stated, that he recovered judgment against the judgment debtor in a particular court on a given date for the payment of the amount of judgment debt and costs, that the judgment is still wholly unsatisfied or is unsatisfied as to a stated amount that the garnishee is indebted to the judgment debtor to a certain sum of money. The amount of the debt attached must be stated if known to the judgment creditor, but failure to state it will not prevent an order from being made.[271] if the judgment creditor has no personal knowledge of the garnishee's indebtedness to the judgment debtor but relies on information relieve by him, it is sufficient for him to depose in the affidavit that he is informed to that effect and only believes that the garnishee is indebted to the judgment debtor provided however that he also deposes in the affidavit the ground of his belief.[272]

If the court is not the one that gave the judgment, the judgment creditor shall file with his affidavit a certified copy of the judgment.[273] The filling of the affidavit is an exparte application for issue of garnishee order. The registrar of the court enters the application in the books of the court and fixes a date for the hearing of the application.[274] The court, if satisfied that the judgment creditors are entitled to attach the debt, makes a garnishee *order nisi.*

The registrar issues the order nisi in form 26, makes copies of it which are served upon the garnishee and the judgment debtor like an ordinary summons. The order nisi direct 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

[271] . *Lucy v. Wood* (1884) WN 58.
[272] . *Vinal v. De Pass* (1892) Ac 90.
[273] . Judgment (Enforcement) Rules, 0rder 8, Rule.3 (1)
[274] . ibid, 0rder 8, Rule.3 (2).

judgment debtor. There should be not less than fourteen days between the date of service and that on which he, as well as the judgment debtor, is required to appear before the court. The order must clearly show that the judgment debtor is the garnishee's creditor otherwise it will not bind the garnishee.

The service of the order nisi on him binds or attaches the debt in the hands of the garnishee.[275] Therefore any payment of the debt to the judgment debtor or its alienation, without leave of court, is null and void.[276] But this is so in so far as the debt has not been paid before service of the order nisi. If before then the garnishee has in good faith paid the debt to the judgment debtor, the order is of no effect as there is no debt to be garnisheed.[277] So a banks serve with a garnishee order may not honor a cheque drawn upon the judgment debtors account even though the money in the account is enough to satisfy the judgment debt and the sum for which the cheque is issued.[278] In practice, however, the garnishee pays what the judgment creditor claim as judgment debt either to the court or ultimately directly to the judgment creditor and pays the balance to the judgment debtor.

Proceedings after service of *order nisi*- The garnishee may within eight days of the services of the order on him pay into court the amount alleged to be due from him to the judgment debtor or if that amount is more than sufficient to satisfy the debt and the costs, a sum to satisfy that debt and cost.[279] Upon such payment into court, the proceedings against him is stayed.[280] But the garnishee may adopt this procedure if he admits his indebtedness to the

[275] . Sheriffs and Civil Process Act, Section 85.
[276] . ibid ,Section 92.
[277] . *Cooper v. Brayne* (1858)27 LJEX 446.
[278] . *Roger v. Whiteney* (1892) Ac 118.
[279] . Judgment (Enforcement) Rules, 0rder 8, Rule 5 (1).
[280] . ibidm 0rder 8, Rule 5(2).

judgment debtor and has no legal objections to paying it. He should however not pay direct to the judgment creditor upon a mere order nisi, unless he is so compelled by a court process.

Where payment is made into court by the garnishee in the manner stated above the registrar may by consent of the judgment debtor, order the money to be paid out to the judgment creditor before the return day of the order nisi.[281]This brings the whole proceedings to an end. In the absence of such consent, the court will on the return day hear the judgment creditor and the judgment debtor on the order nisi and thereafter may make such order including order as to costs, as may be just.[141] such order may be *garnishee order absolute*.

The garnishee may dispute his liability to pay the debt. In that case he does not have to make any payment into the court, rather he will appear in court on the return date and dispute his liability. the court may then order that any issue or question necessary for determining his liability be determined or tried in any manner in which any issue or question in any proceedings may be tried or determined or may refer the matter to a referee.[282]If the court makes such an order, it directs which of the three parties to the garnishee proceedings and any other person claiming interest or lien on the debt shall be plaintiff and which shall be dependent in the proceedings for the trial or determination of the issue.[283]

The garnishee disputes liability by denying indebtedness to the judgment debtor.[284] He must make out a *Prima facie* case in favour of an order for an issue to be tried. Even where the judgment creditor is himself indebted to the garnishee this fact does not provide a ground for disputing liability to pay the attached debt. this is because he cannot set off against such

[281] . ibid, 0rder 8, Rule 6.
[282] . Sheriffs and Civil Process Act, S.87 ; *Nigeria Hotels Ltd v. Nzekwe* (1990)5 NWLR 187 at 197.
[283] . 0.8, R.8(2) Judgment (Enforcement) Rules.
[284] . *Vinall v. De Pass* (supra)p.75.

attached debt, one owing to him by the judgment creditor, The garnishor although he can set off against judgment debtor a debt owing by the judgment debtor and in existence at the time of the order nisi.[285] But the garnishee may counter claim if the amount of the counter claim exceeds the debt he owes to the judgment debtor.[286]

Apart from disputing liability, a garnishee may contend that the debt sought to be attached belongs to some third party or that party has a lien or charge on it.[287] The court may in that case order such third person to appear and stet the nature and particulars of his claim upon the debt.[288] It is the garnishee's duty to inform the court of such claim or lien of third person known to him.[289] Also if by any means it comes to the knowledge of the court that a third person has no reasonable grounds to claim on the debt subject to the garnishee order nisi, it is the duty of the court in equity to withhold a garnishee order absolute and to direct an inquiry.[290] On his application such a third party may be made a party to the proceedings.[291]If a third person alleged by the garnishee to be having a claim or lien to the debt fails to appear before the court as ordered, the court on proof of service of a copy of the order may proceed to make an order as if such person had appeared.[292]

Similarly, if the garnishee does not within the prescribed time pay into court the amount due from him and does not dispute the debt or if he does not appear as summoned, the court on proof of service may make the garnishee *order nisi, absolute*. The order in each of these case, being one made in default of appearance may it is submitted, on the application of the absent

[285] . *Nathan v. Giles* (1914)5 Taunt 558.
[286] . *Hale v. Victoria Plumbing Co. And Another* (1966)2 QB 746.
[287] . Sheriffs and Civil Process Act, S.88.
[288] . Ibid.
[289] . *The Leader* (1868)LR 2 A & E 314.
[290] . *Osu v. Ojikutu* (1952)14 WACA 88.
[291] . Ibid.
[292] .Ibid, Section 89.

party, be set aside. The court may not make an order absolute after hearing the case on merit, no such order absolute will be made where there is doubt as to whether or not the debt attached belongs to the judgment debt or absolutely.[293]

Where, however, it makes the order, execution may be levied upon the garnishee by any of the methods of enforcing a judgment for pay of money, if he fails to pay the debt to the judgment creditor who is the proper person to levy such execution.[294] Payment made by or execution thus levied upon a garnishee is a valid discharge to him against the judgment debtor to the amount paid or levied.[295] The court may also bar the claim of a third party.[296]A copy of the garnishee order nisi, absolute will be submitted to the registrar of the court, from there the registrar after preparing the court order in which the amount of the debt and execution fee is stated will forward such file through the enforcement department to the Chief Registrar for approval to execute the order. In this case whether the bank owes the money of the judgment debtor or not, they will be responsible to pay the whole judgment sum and execution fees or their property will be attached and auctioned, if not paid within the specified time to realize the judgment sum.

Execution against the banks is one of the difficult execution, especially when the judgment sum is in millions. To make the banks pay the judgment sum, attachment should be made to one of the most sensitive property (generators and computers). The essence of attaching these items is to make them pay not to go with them and sell because they worth nothing in looking at the judgment sum. Note that, only bank draft are not accepted as payment of any judgment

[293] . *Barclays Bank DC. v. Baderinwa*(supra)p.73.
[294] . Sheriffs and Civil Process Act, S.90.
[295] . ibid S.91.
[296] . ibid S.90.

sum. Any cheque issued as payment of judgment sum, is not acceptable. Where the amount is more than ten million, the draft should be split. That is the rule provided by the CBN (amount of more than ten million should not be issued in one draft). A sod code is also provided by the court for payment of judgment sum if requested by the judgment debtor.

Any payment made as judgment sum are deposited in to the high court account. The judgment creditor or his counsel will make an application to the chief registrar for the release of the sum. Where the chief registrar find out that there is no any application as stay of execution or notice of appeal regarding such judgment sum, the chief registrar will issue a cheque in the name of the judgment creditor or his counsel (where there is a written authority to do so). Or where the money is much, a sod code will be requested from the judgment creditor to credit his account through E-payment. Note that judgment debtor cannot stay garnishee order

3.4 Judgment Summons

As a mode of enforcing judgment for payment of money, judgment summons is somehow unique, in that by it, a judgment debtor who can but fails to pay the debt may be committed to prison for his default. But such consequence does not arise where the default is through poverty. The judgment debtor is summoned to court and examined orally on oath in court as to his means and if at the end of the exercise the court is satisfied of his ability to pay, it may make any of the orders provided for in that regard, one of which is committed to prison.

Proceedings for execution by way of judgment summon may be commenced by the judgment creditor where a judgment debtor has defaulted in payment of the judgment debt or any installment of it ordered to be paid. These must have been default in payment before the

proceedings. The court has no jurisdiction to make an order of committal of a judgment debtor in anticipation of a default which has not yet arisen.[297] The judgment creditor first step, is to apply to the court for the issue of a judgment summons by filing a praecipe in the prescribe form, which is form 13 in the first schedule to the Act containing the particulars required in that form.[298]

The judgment summons requires the judgment debtor to appear in court and be examined on oath as to his means. The application for its issue may be made whether there is only one judgment debtor or two or more jointly liable under the judgment order.[299] The proper venue for commencing the proceedings is, in the case of enforcement of a high court judgment, the judicial division, and for execution of a Magistrate's Court judgment, the Magistrate District in which the judgment debtor resides or carries on business. Where there are two or more judgment debtors to be proceeded against, proceeding may be started in the division or district in which any of them resides or carries on business.

A judgment against a firm can be enforced against the firm by means of judgment summons. For this purpose, the judgment creditor has to apply for the issue of the summons against any person whom he alleges to be a partner of the firm. He shall file with the praecipe an affidavit in form 16 of the first schedule to the Act stating the grounds on which he makes the allegation. A copy of this affidavit is served along with judgment summons when issued.

However, in execution by means of judgment summons no proceeding in Magistrate's Court is transferred to the High Court. Each particular court, that is, a High Court or Magistrate's Court issues a judgment summons and handles the proceedings thereon for the enforcement

[297] . *Makande v. Barclays Bank D.C.O* (1962)2 All NLR 104.
[298] . Sheriffs and Civil Process Act, Section 55.
[299] . Ibid.

of a judgment given by it, although districts, as the case may be in which the judgment was given and in which the enforcement takes place may be different.

Application for the issue of judgment summons may be made, notwithstanding that an order has earlier been made for payment of judgment debt by installment and even before any default is made in payment.[300] But the judgment creditor may be liable for the costs of proceedings, unless the judgment debtor is proved to have been guilty or any of the misconducts enumerated in section 66 of the Act (nonattendance of judgment debtor; refusal to satisfy judgment; fraudulent disposition; debt contracted by fraud; forbearance obtained by fraud; debt recklessly contracted and disobedience of judgment other that for money).

Also a judgment creditor who has issued a writ of*fifa* against a judgment debtor may apply for the issue of a judgment summons against the same debtor. But in that event, proceedings on the writ of *fifa* shall be stayed.[301] Also the judgment summons should not be issued until the judgment creditor has paid any fees or expenses incurred in the execution of the writ.[302] Where a judgment summons is pending or a warrant of commitments outstanding in respect of money payable under a judgment, no other writ of execution in respect of the money so payable shall issue except by leave of court.[303]The court has discretion whether or not to grant application for the issue of a judgment summons. The judgment summons should be in accordance with form 14 or form 15 of the first schedule to the Act. [304]The form is use against an individual and the latter against a firm.

[300] . Judgment (Enforcement) Rules, 0rder 9, Rule 1(1).
[301] . ibid, 0rder 9, Rule 2(1).
[302] . Ibid.
[303] . ibid, 0rder 4, Rule 12.
[304]. *National Bank of Nigeria Ltd V. Nasara& another* (1952)20 NLR 84.

After issue, the judgment summons has to be served on the judgment debtor. It is personally served on him in accordance with the rules for personal service of an ordinary summons.[305] Substituted service may in an appropriate case, be allowed. The interval between service and the hearing should not be less than five clear days. This interval is fixed by the registrar having regard to the distance between the court and the judgment debtor's residence.[306]The judgment debtor is summoned by the process to appear and be examined on oath, as to his means if, it appear to the court that there is probable cause to believe that the judgment debtor, for the purpose of avoiding this examination is about to leave the division or district where he resides or normally carries on business, the court may order that he be brought before it and may issue a warrant for his arrest and for his custody in debtors prison until the day fixed for the examination.[307] In case he is in custody, the court may order the officer in charge of the prison in which he is detained to bring him before the court.

If the judgment debtor does not appear in court in obedience to the summons, the same consequences of court order for his arrest and detention in custody until the date fixed for his examination follow.[308]On his appearance before the court, he may be examined on oath by or on behalf of the judgment creditor and by the court, respecting his ability to pay the judgment debt, the debts that are owing to him, the disposal which he may have made of his properties, the discovery of property applicable to payment of his debt.[309] He is bound to provide on oath or otherwise all books, and documents in his possession relating to such property. He is

[305] .Ibid 0rder 9, Rule 5 (1).
[306] . ibid, 0rder 9, Rule 5(2).
[307] . Section 58, Sheriffs and Civil Process Act.
[308] . Ibid.
[309] . Ibid, Section 60(1).

also examined respecting the circumstances in which he contracted or incurred the debt or the liability, the means or expectation he had of paying the debt.[310]

The judgment creditor and all other witness whom the court thinks requisite may be examined on oath or otherwise in respect of the matters mentioned above.[311] This is so whether the judgment debtor appears or not.[312]The court may adjourn the examination, if necessary, and require from the judgment debtor such security for his appearance at the adjourn hearing, as seems fit.[313] In default of his finding security, the court may commit him to prison there to remain until the adjourned hearing or may discharge him from custody.[314]

In the course of this examination, the court may make an order for a writ of interim order for the protection of any property of the judgment debtor on which execution may be levied. [315]The order is made for the preservation or safe custody of the property pending the end of the determination.[316] Property attached is placed at the "disposal of the court" until further orders and is in no sense in the possession of either the judgment creditor or judgment debtor.[317]If the judgment debtor at any time before the making of the final order pays the debt for which the execution of judgment summons was issued, or part of it and the judgment creditor agrees to accept in full satisfaction, the judgment summons may be struck out.[318]Also, the property against which there is a writ of interim attachment may be released

[310] . ibid, Section 60(1)(b).
[311] . ibid Section 60(2).
[312] . Ibid.
[313] . Ibid Section 61.
[314] . Ibid.
[315] . Ibid S.62.
[316] . *Khoury v. Sharam* (1953)14 WACA 279.
[317] . Ibid.
[318] . Judgment (Enforcement) Rules, 0rder 9, Rule 8.

to the judgment debtor on his paying the requisite amount for which execution is to be levied on it. [319]

where the judgment debtor disputes the amount of the judgment debt in payment of which he is alleged to have made default at the hearing of the judgment summons, the court first of all settle the question as to the correct amount, and for that purpose, may take evidence from both parties and other witness it may consider necessary.[320]At the conclusion of the examination the court may make any of four specified orders. Proceedings following the issue of judgment summons may not necessary result in the imprisonment of the judgment debtor. The court may make one of these orders:

a) It may commit the judgment debtor to prison for any terms not exceeding six weeks for making default in the payment of the judgment debt; or
b) Any installment thereof due if it is proved to the satisfaction of the court that the judgment debtor has or has had since the date of the judgment or the order, the means to pay the sum in respect of which he has made the default;or
c) An order for the attachment and sale of the judgment debtor's property; or
d) An order for the discharge of the judgment debtor from prison.[321]The expression "means to pay" used above includes all assets of the judgment debtor which can be realized for money except wearing apparel and bedding of his and his family and implements of his trade.[322]

[319] . Ibid, 0rder 9, Rule 7.
[320] . ibid, 0rder 9, Rule 10.
[321] . Sheriffs and Civil Process Act, Section 65.
[322] . *Makande v. Barclays Bank* (supra)p.80.

Before an order of committal is made the judgment debtor may file in duplicate a full statement of account of all properties belonging to him exclusively, or jointly with others.[323] A duplicate of this statement is sent by the registrar to the judgment creditor.[324] If at the hearing of the judgment summons, the judgment debtor satisfies the court that he has made full surrender and discharge of his property and that he is unable because of unavoidable misfortune to satisfy the judgment and that he has not been guilty of any misconduct mentioned in section 66 of the Act and that he ought not be imprisoned, the court shall make no order for his commitments but if it is subsequently shown to the satisfaction of the court that judgment debtor has not made a full disclosure, the foregoing provision shall not apply.[325]

The judgment creditor following whose application the judgment debtor is committed to prisons pays monthly allowance fixed by the court for the subsistence of the judgment debtor.[326]

But where it is proved that the judgment debtor has sufficient means for maintaining himself, the court may after hearing him order that no subsistence money be paid by the judgment creditor.[327]Upon default by judgment creditor in paying the allowance the judgment debtor shall be released from prison.[328]In case of illness, the prisoner may be moved to a government hospital. The period spent in the hospital is counted as part of his term of

[323] . Judgment (Enforcement) Rules, 0rder 9, Rule 9(1).
[324] . Ibid, 0rder 9, Rule 9(2).
[325] . Ibid, 0rder 9, Rule 9(3).
[326] . Sheriffs and Civil Process Act, S.78.
[327] . Ibid.
[328] . Ibid, Section 65(5).

imprisonment. The court may also order that the hospital charges be by the government or the judgment creditor.[329]

Sum disbursed by the judgment creditor for the subsistence of the judgment debtor in prison or hospital are added to the cost of the suit and recoverable by attachment and sale of the property of the debtor.[330] Other expenses by the judgment creditor, such as court fees, his traveling expenses are similarly added to the judgment debt and are recoverable by the judgment creditor unless the court otherwise orders.[331]The judgment creditor may be liable for cost. Where he caused the issue of judgment summons before any default in payment of proceedings, a new order for payment of the debt more beneficial to him than payment by installment is made.[332]Otherwise the court may order him to pay any cost reasonable incurred by the judgment debtor.[333]The imprisonment does not operate as a satisfaction or extinguishment of the judgment debt, and the judgment creditor may still take out execution against the movable or immovable property of the judgment debtor in the same manner as if such imprisonment had not taken place.[334]

It does not also prevent the judgment debtor from being again imprisoned for any Act of willful disobedience or other default or misconduct rendering him liable to be imprisoned and which occurs or continues after imprisoned or released.[335] Except in these cases, a judgment debtor released from imprisonment shall not be imprisoned again for the same

[329] . Ibid, Section 79.
[330] . Ibid Section 80.
[331] . Ibid Section 81.
[332] . Judgment (Enforcement) Rules, 0rder 9, Rule 1 (2).
[333] . Ibid.
[334] . Sheriffs and Civil Process Act, Section 76.
[335] . Ibid ,Section 77.

debt.[336]Judgment summon, where it results in imprisonment of the judgment debtor is not, as such a means of direct enforcement of judgment of payment of money the imprisonment is penal sanction for the debtor's culpable default. It may force him to make serious and meaningful effort to pay up, for upon payment he is released from prison.[337]The other order's which the court may make after the examination as to the means of the judgment debtor are an order for the attachment and sale of the judgment debtor's property, an order for the payment of the judgment debt by installment is or otherwise by him and an order for the discharge of the judgment debtor from prison.[338]The last mentioned order may arise where the judgment debtor has been committed to prison for disobeying the judgment summons. The judgment debtor will be proceeded with for contempt of court in the course of the examination as to his means for any of the following Acts or omission:

a) Nonattendance as required by summons and failure to excuse same to the satisfaction of the court.
b) Refusal to the sworn or to disclose the matters on which he is examined, and
c) Not answering questions put to him to the satisfaction of the court.[339]

If, in the course of the examination it appears to the court from the evidence adduced that the Judgment debtor has committed any such "misconduct" the court may similarly deal with him forcontempt. These acts or omission are:

i. Refusal or willful neglect to satisfy judgment even though the means exist;
ii. Fraudulent disposition of his property in order to defraud or delay his creditors;

[336] . Ibid.
[337] . Ibid ,Section 65 (4).
[338] . Ibid S.63.
[339] Ibid, Section 66.

iii. Contracting or improving the debt in respect of which judgment has been given by fraud or false pretence;

iv. Obtaining forbearance of the debt by fraud or false pretence;

v. Disobedience of judgment other than for money.[340]

In proceeding for the contempt, the court first issues a warrant for the arrest and detention in custody of the judgment debtor and he is then ordered to show cause why he should not be punished for his misconduct. If he appears before the court and fails to show cause or if he fails to appear before the court as ordered, the court may commit him for contempt. Their term of imprisonment depend on the amount of judgment debt for which the summons was issued. if the judgment is for a term of a sum not exceeding thirty naira, then the imprisonment is for a term not more than three months; for a sum not exceeding two hundred naira, imprisonment is for a term not more than six months; for any amount above two hundred naira if the term is a maximum of one years.[341]

The proceedings for contempt for misconduct are without prejudice to any of the powers of the court in relation to judgment summons.[342] The conditions and incidents of imprisonment arising out of the contempt charge are the same as those that attend imprisonment on judgment summons already dealt with. It is regrettable to observe that judgment summons with all its coercive power is rarely exploited by both lawyers and litigants in the enforcement of judgments. There can be nothing more deterring than the fear of

[340] . Ibid.
[341] . Sheriffs and Civil Process Act, Section 69.
[342] . ibid, Section 66.

imprisonment staring the face of a judgment debtor and this he submit, is enough to ensure payment by a judgment debtor who has the means to pay but deliberately refuse to pay.[343]

The court may order that a judgment which directs the payment of money be paid by installment. An order for instalmental payment can be made at the time of giving the judgment or at any time after the judgment. An order for instalmental payment cannot properly be made over an unduly long period. [344]The court will refuse to make an order of instalmental payment unless the amount of loan or debt is known or ascertained. [345]An order of installment payment is made on the application of the judgment debtor notice to the judgment creditor, supported by an affidavit setting forth the reason for the instalmental payments. The court will satisfy itself that the judgment debt is for instalment payment.[346] An order for instalmental payment may be rescinded at any time upon sufficient cause shown. An order for instalmental payment will operates as a stay of execution of the original judgment and the execution can be issued only for the amount of instalments which have become due and payable. Therefore execution can only be levied where the judgment debtor defaulted in payment and the time specified for the payment has passed. In such case execution will be levied against the judgment debtor's property for the whole amounts remain unpaid. In *Kuda Engineering Construction Company Ltd. V. Onyekachi, Judgment* was given against the judgment debtor, for instalmental payment, but the judgment debtor defaulted. Execution was levied against property of the defaulting party to realize the remaining judgment sum together with the enforcement fees [347]

[343] . Nwadiola F. *Civil Procedure In Nigeria* (supra) p.13.
[344] . *U.B.N Ltd v. Penny Mart Ltd.* (1992)2 NLR.(pt 240) 228 at 224.
[345] . Ibid.
[346] . *ACB Ltd* v. Dominico Builders Co. Ltd. (1992)2 NWLR (pt. 223)296 at 303.
[347] . Sherriff and Civil Process Act, Section, 21. FCT/HC/CV/868/2009, (unreported).

3.5. Enforcement of Judgment Other than Money Judgment

3.5.1 Unenforceable Judgments

a- Interlocutory orders:

This is one of the judgments that cannot be executed. Thus, to invoke the coercive powers of the court in the enforcement of judgment, the practitioner must ascertain whether or not the particular judgment is an enforceable one or not in other to avoid embarking on a fruitless journey. There are special provisions in the judgment (enforcement) rules on how interlocutory orders are to be enforced. Such orders could be enforced by any other applicable means authorized by the Act or Rules. The method laid down in the rules, if the plaintiff makes default or fails in fulfilling any interlocutory orders, the court may, if it thinks fit, stay further proceedings in the suit until the order is fulfilled. It may alternatively give judgment against or non-suit such plaintiff with or without liberty of giving any other suit on same ground of action or may make such other order on such terms as it may consider just.

The interlocutory order referred to, need not be one other than for payment of money, for no such restricted meaning is in any way implied. If it is for payment of money then in addition to any of the type already dealt with, the method under discussion may also be applied. The interlocutory order may be an order of interim injunction, in which case an additional mode of enforcement by committal of the defaulting judgment debtor, to be discussed later, may be resorted to. If the defaulting partly in an interlocutory order is the plaintiff, the sanction against him for the default is either an order staying further proceeding until compliance by him or an order entering judgment against him. This is effective enough for, it is the plaintiff

who initiates proceedings and it is naturally in his interest to prosecute his claim in the normal way and to its natural conclusion.

The sanction may be invoked by the court on the application of a defendant. He does this by motion on notice to the plaintiff. The services of such motion often bestirs the plaintiff to necessary action. Failure by the plaintiff to file his statement of claim as ordered by the court is default in fulfilling an interlocutory order. The defendant may therefore move the court for judgment. If the default or failure to comply with an interlocutory orders is by a defendant, the court may give judgment by default against him, or make such other order as to the court may seem fit. Where a defendant fails to file his statement of defence, the plaintiff may apply by motion on notice for judgment. Note that interlocutory judgment cannot be executed.

One of the types of judgment which cannot be executed is an interlocutory judgment because it does not at once effect the status of the parties, neither does it finally dispose of their rights since it leaves undecided, the various points at issue and no execution can proceed without reference to court.[348] This case was struck out for want of jurisdiction and the plaintiff appealed and thereafter filed an application for stay of execution. The Supreme Court refused the application because it was an interlocutory order which had not in any way affected the status of the parties.

b- Declaratory order: This also cannot be executed because it merely declare the right of the parties and is dormant, hence it has no force of execution in the judgment or order. But this can be enforced by an action. The party who obtains a declaratory judgment or orders may go back to the court and seek an order to enforce it. Affirming this position, "it is a matter of

[348] . *Tukur V. Governor of Gongola* state supra p. 1.

general consensus among academic writers and judicial decision 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, when such right is threatened or is being violated. Hence a declaratory order or judgment remains a dormant right until subsequent proceedings have been taken to protect the threat or violation of the rights so declared in the judgment or order".[349]

3.5.2. Enforcement of Judgment Directing Deed to be Executed

A judgment may direct judgment debtor to execute a deed or any other document. For example In an action for specific performance or a contract of sales of land, the judgment debtor may be ordered to execute the conveyance transferring his title in land to judgment creditor. Therefore, if there is default by the judgment debtor, the judgment creditor may on his own prepare the deed or endorsement of the instrument in accordance with the terms of the judgment. He will apply by motion to court for an order that such be executed or endorsed by the registrar. If a case is made out of it, the court may grant the application. This may be lodged with the High Court registrar for execution who has the duty to bring the same to the notice of the judge who on being satisfied with the document, will authorized its execution by the registrar.[350] In the FCT high court, the execution is carried out by the enforcement department. Default by judgment debtor to execute the deed also amounts to disobedience of a judgment of the court.

3.5.3Enforcement of a judgment for possession in an action for recovery of land-

[349] . *Okoya v. Santili*(1990) (supra) p.40
[350] . Judgment (Enforcement) Rules, 0rder 11, Rule 11.

The judgment may require the defendant to give the plaintiff possession of the land or order that the plaintiff recover possession of the land. As provided in the rules of a judgment or order for the recovery of land or for the delivery of portion of land in an action other than an action between landlord/ tenants is enforceable by a writ of possession. The writ shall be in the form of a warrant of possession.[351] In the FCT High Court writ for possession is used in the recovery of premises between landlord and tenant for ejection. The writ is addressed to the sheriff and commands him to enter land and cause the judgment Creditor to have possession of it. The writ must contain a description of the property of which possession is to be given.

A judgment creditor applied for the issue of a writ of possession by filing a praecipe in form 3 to the schedule of the Act and paying the requisite court fees. This is filed in the registry of the court that gave the judgment or made the order. No leave of court is required for the issue of writ of possession. The purpose of executing a writ is to give possession of any premises, it is not necessary to remove any goods or chattels from those premises. Upon issuance of the writ of possession, the plaintiff must go upon the property of which possession is to be given. The sheriff is to immediately proceed to deliver complete and vacant possession of the premises to the plaintiff. He is entitle, if need be, to turn out by force all persons in possession of the property. In the execution of writ of possession, the sheriff may in to a home on the property.[352]

[351] .Ibid, 0rder 11, Rule 5.
[352] . Sheriffs and Civil Process Act, Section 24; and *Lipton v Wells* (1589) 1 Ceon 145.

Where judgment is for recovery of possession on as well as payment of money in the form of rent, mense profit or cost, writ of fifa may be issued in addition to the writ of possession. The two writs may be combined together in a prescribed form in an appropriate case.

Under the Judgment Enforcement Procedure Rule, no writ of possession shall be issued until after the expiration of the day on which the defendant is ordered to give possession of the land by the court. Where no date has been fixed by the court, until after the expiration of fourteen days from the day on which judgment is given. This is provided for in order to give the defendant or tenant in possession the opportunity to either comply with the judgment or apply to the court for any relief which may be available to him. There are two circumstances were execution of judgment of court may be against third parties, who are in possession and are not parties to matter before the court.

i. Where a third party bought a piece of land from another party and thereafter the vendor's title is challenged in court by another party and the vendor's title is declared invalid. The same principle below applies.
ii. Where a third party bought a landed property which is under litigation and the title of the vendor who sold to him was later impeached in favour of another party. Here, the principle of *nemodat quod non habet* (he who owns the land, owns what is on the land) will apply to defeat any sale or transfer of property during the currency of litigation.

Note that, process of recovery by of possession by ejectment is effected after hearing the parties and the court is satisfied that the tenancy has effectively determined, the court may order that possession be given to the plaintiff either immediately or at the expiration of the number of days specified by the court. The plaintiff may apply for warrant of possession to

recover possession. In practice, in the FCT High Court Abuja, it is expected that the landlord wait for at least fourteen days before applying for a warrant of possession. This has the same procedure for the execution of money judgment. The court will issue a warrant commanding the enforcement department to eject the tenant and his belongings and hand over the key of the premises to the plaintiff (landlord or his counsel). Where there is monetary judgment against the tenant for rent arreas, mense profit or cost, the officer in charge of ejection will be empowered to attach and sell whatever movable property of the tenant that could be attached to satisfy the judgment debt. The same procedure for the sale of attached movable property mentioned above, apply.

Where the tenant sublet the premises to another person, the sub tenant will be ejected but his property will not be attach since he is not a party to the suit. Execution by the writ is to recover possession and is entirely different from execution upon immovable property which is by way of attachment and sale of that property.

3.6 Execution Of Judgments, Intra-State, Inter States, And Foreign Judgment.

3.6.1 Intra-State Execution of Judgments

This is the execution outside judicial division i.e. execution of judgments in one division or district given in another division or district of the same court in a state. As stated before, the writ for execution of a judgment is issued by the court before which the proceeding is pending or which gave the judgment.[353] While the execution is in the court for the division or district in which the person or property against whom or which the execution is to be levied

[353] . Judgment (Enforcement) Rules Cap.F35 LFN 2004, Order 2, Rule 24.

is or is situate.[354]The issue and execution of a writ may, therefore, be in different divisions or districts.

Procedure: The procedure on how a writ of execution of judgment issued by a court for one division or district may be executed in another divisions or districts of the same court is that, the registrar of the court that issues the process sends it to the registrar of the same court for the division or district in which execution is to take place,[355]requiring the latter to cause the process to be executed within his division or district. The former, that is, the court from which the process issues and is sent to another court for execution is referred to as the "Home Court" and the latter, that is the court to which the process is sent for execution as the "Foreign Court".

The registrar of the home court sends the process to his counterpart of the foreign court for execution in the latter's division or district. The process is sent with a warrant in form II to the first schedule of the Act endorsed on it or annexed to it. It is this warrant that requires and authorizes execution in the foreign court. On receipt of the process and the warrant, the registrar of the foreign court should act in all respects as if the original process had been issued by his court. After the execution he makes a report to the registrar of the home court of what he has done in the execution of the process and pays over all moneys (if any) received in pursuance of the process. The form used for the returns is Form 12 in the first schedule of the Act.

In Abuja, FCT High Court, where they have no divisions of court, execution of judgments and court order are centralized, and carried out at the main headquarter in Maitama, by the

[354] . Ibid, Order 2, Rule 26(1).
[355] . Ibid, Order 2, Rule 26(2), Rule 28 and Sheriff and Civil process Act, Section 37 and 39.

enforcement department. All high courts and magistrates court files for execution are sent down to the execution department for execution without any warrant from the registrar of the court that send the execution file. Also, no any report is sent to the registrar and any money received in pursuance of the process, is handed over directly to the judgment creditor.

3.6.2 Inter States Execution of Judgment

This is the execution of judgment outside jurisdiction i.e. execution of a judgment in a state given by a court in another state, Process like warrant of arrest, Judgment summons, summons for garnishee proceedings which merely require a person summoned to appear before a court summoning him may be issued by a court in one state and served on a person in another state by virtue of section 96 of the Act.

The procedure for enforcement outside jurisdiction is as follows: If a person in whose favor a judgment is given in a court of any state wants to enforcer it outside that state, he will first of all, apply to the registrar of that court for the issue of a certificate of that judgment in the form and containing the particulars set forth in the second schedule.[356]

The registrar issues this certificate under his hand and seal of his court and delivers it to the person i.e. the judgment creditor or his legal practitioner or other agent. The person then takes this certificate to the registrar of a court of like jurisdiction in the state in which he intends to execute the judgment. This means that if the certificate of judgment is issued by a High court he must take it to the registrar of a High Court of the other state, and similarly where it is a magistrate's court, upon production of the certificate of judgment to the registrar

[356] . Sheriffs and Civil process Act, Section 104.

of the other court, that registrar forthwith registers the certificate by entering its particulars in a book kept in the registries and called, "the Nigeria register of judgments".[357]

The particulars to be entered in the certificate are:

a. The title of the suit and date of commencement,
b. Form or nature of suit,
c. Name and address of party to whom payment is to be made or in whose favor the judgment was given or made,
d. Name and address of party ordered to pay money, or to do or not to do any act,
e. Date of judgment,
f. Abstract of judgment, and;
g. Date of trial and amount of verdict, if any.[358]

From the date of registration of the certificate by the registrar of the court in which the judgment is to be executed, the certificate becomes a record of that court and has the same force and effect in all respects as a judgment given by it. That same court may take any proceedings on the certificate as it can take on its own judgment as if the certificate were a judgment given by it.[359]In respect of the issue of process upon the certificate and the enforcement of the judgment, it has the same control and jurisdiction over the judgment as if that judgment were one given by it.[360]Thus, it may, upon the application of the judgment debtor order a stay of proceedings on the certificate.[361]The court may also, upon being satisfied that the registration of the judgment was reasonably justified under the

[357] . Ibid, Section 105.
[358] .Apolayan A.F., OkorieP.C et al (2007). *Modern Civil procedure*. Dee-Sage, Lagos, Nigeria, PP. 310.
[359] . Ibid.
[360] . Sheriff and Civil process Act.Section 108.
[361] . Ibid, Section 109(1).

circumstances order that the judgment creditor's costs of registration and other proceedings for the execution, as assessed by it, but not exceeding the prescribed amount to be paid by the judgment debtor to the judgment creditor. Any such order is deemed to be incorporated with the certificate and the amount payable under it also recoverable under the certificate.[362]

But before a process can be issued upon the certificate by the court, the judgment creditor or any other person cognizant with the facts of the case should first file an affidavit in the same court stating that the amount for which process is proposed to be issued is actually due and unpaid, or that the act ordered be done remains undone, or that the person ordered to forebear from doing an act has disobeyed the order.[363]No process shall issue for larger amount than that sworn to.[364]On fulfilling this requirement, the appropriate process may be issued and necessary execution levied upon it.[365]

The registrar of the court at the end of the execution forthwith reports, in writing and under the seal of the court, the proceedings for the execution and their outcome, i.e. whether the judgment has been satisfied in whole or in part, to the registrar of the court that sent the certification notifying that court that the judgment has been satisfied in the former's court.[366]

Where a judgment given in one state is registered in another state, proceedings for execution in the latter state are governed by the federal provisions in Sections 104 to 110 of the Sheriff and Civil process Act and not by the provisions in the corresponding law of any of the two states.[367]Judgment of any state in Nigeria which is to be enforce in FCT High court Abuja

[362] . Ibid Section 106.
[363] . Ibid Section 107.
[364] . Ibid.
[365] . Sheriff and Civil process Act, Section 111.
[366] . *Electrical and Mechanical Construction Co. Ltd V. Total Nigeria and Ano*. (1992)IAll NLR (pt2)293.
[367] . Ibid.

shall be done, through an application to the chief registrar of the FCT High Court Abuja on a letter head and attached to it, with the judgment certificate, stating the reasons why you want to enforce in the FCT High Court Abuja. A motion exparte is file with an affidavit in support and a written address, judgment certificate is to be exhibited in the motion exparte. This is also submitting to the chief registrar together with the letter written. The chief registrar will then minute to the head of process through director litigation, such letter is then forward to the process unit for filling. A file will be open carrying the name of the parties and motion number, this file will be sent to director litigation for him to minute to the chief judge to assign the case to one of the High Courts in FCT Abuja, if is a high court matter. Counsel to the judgment creditor or the plaintiff will then move the motion, and if prayers are granted, writ of fifa will be issued by the registrar of that court fully endorsed by the judge and the registrar, which will be sent to the execution department for execution. The same procedure for executing other writ in the FCT High Court of Abuja applied.

3.6.3 Reciprocal Enforcement of Judgment

This is the enforcement of foreign judgment i.e. between two countries. The judgment of a court in one country may be enforced in another country. This is brought about through legislation by each of the countries. In Nigeria there is such legislation in the foreign judgments (Reciprocal Enforcement) Act 1960 which came into force on 1st February 1961 (legal notice No. 56 1961). Under the Act, judgments of courts in certain foreign countries may be enforced in Nigeria and judgments of the courts in Nigeria may, in turn be enforced in such countries.

The foreign judgments (Reciprocal Enforcement) Act, 2004, empowers[368]the ministers of justice to direct by order, if he is satisfied that in the event of the benefits conferred by Part 1 of the Act being extended to judgment given in the superior courts of any foreign country, substantially reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the High Courts in Nigeria. That part of the Act shall extended to that foreign country. Part 1 of the Act provides for enforcement of judgments of superior courts of foreign countries in Nigeria, there must be reciprocity of the benefit of enforcement of judgment between Nigeria and a foreign country for the Act to apply.[369]

3.6.3.1 Enforcement of Foreign Judgments in Nigeria

The judgments of the courts of foreign countries which can be enforced in Nigeria may be those to which part 1 of the Act extends by order of the minister of justice. It is only the judgments of such courts that are specified in the orders as superior courts of the country that are enforceable.[370]

The judgment itself must be final and conclusive.[371] As between the parties not withstanding that an appeal may be pending against it or that it may still be subject to appeal in the courts of the foreign country. There must also be payable under it a sum of money, not being a sum payable as taxes or other charges of a like nature or in respect of a Fine or other penalty.[372]

The requirement that once appeal is filed at original court, the foreign judgment cannot be registered, that registering court may be prejudicial to the judgment creditor. Most judgment

[368] . Sheriff and Civil process Act, Section 3(1).
[369] . Foreign Judgments (Reciprocal Enforcement) Act, cap. F35 LFN 2004, Section 12.
[370] .Ibid, Section 3(1).
[371] . Ibid, Section 3(2)(a).
[372] . Ibid ,Section 3(2)(b).

debtors in an attempt to deny the judgment creditor the fruit of his judgment, files an appeal at the original jurisdiction and goes to sleep Or judgment debtor dissipates the *res* before the outcome of the appeal at the original court. Because it is not justifiable to preserve the rest at the registering court, pending the outcome of the appeal at original jurisdiction.

Foreign judgment in respect of fine, tax and penalties cannot be enforce in Nigeria. This is against the whole concept of reciprocal treatment of judgment because it may give a safe landing to implement tax evaders. With the increase in tax evasion by foreign business and multinational companies, inability of the state and the government body to recover judgment debts in respect of fines, penalties across borders would lead to great loss of revenue.

Nigeria will gain more if it offers herself and other state the opportunity to recover fine, tax and penalties against offenders by either amending her foreign judgment statutes to accord foreign judgment on fine, tax and penalties the same status with monetary judgment or enter multilateral and bilateral treaties with other states to assist themselves on recovery of cross borders fine, tax and penalties.

Procedure -Judgment creditors who wants to enforce such a judgment has to apply to a High Court in Nigeria at any time within six years after the date of the judgment, or where there has been appeal against the judgment, after the date of the last judgment given in the appeals, to have the judgment registered in that High Court.[373]This application is made by motion supported by an affidavit and may be on notice. The court may, subject to proof of matters that may be prescribed therefore, in its rules and to other provisions of the Act, order the judgment to be registered.[374]On its being registered, the judgment for the purposes of

[373] .Ibid, Section 4(1).
[374] . Ibid.

execution is of the force and effect, and proceedings may be taken on it. The sum for which it is registered carries interest and the registering High Court has the same control over the execution of the registered judgment as if that judgment had been one given in the High Court on the date of the registration.[375]The jurisdiction of the High Court therefore relates only to execution and consequently it cannot order or permit payment by installment of the judgment debt.[376]

Where the sum payable under a judgment to be registered is expressed in a currency other than the currency of Nigeria, it should be registered as it is where a judgment for such, in the currency of Nigeria as on the basis of the rate of exchange prevailing at the date of the judgment of the court of the foreign country, equivalent to the sum so payable.[377]Also, if at the date of the application for registration the judgment has been partly satisfied, the registration shall be in respect of the balance only remaining payable as at that date.[378]

A judgment shall not be registered if at the date of the application it has been wholly satisfied or if it could at that date not be enforced by execution in the foreign country in which it was given.[379]After it has been registered, the judgment debtor may apply to the registering High Court to set aside the registration.[380]The registration shall be set aside on any of the following grounds:

i. That the judgment is not one to which Part 1 of the Act applies or was registered in contravention of any of the provisions of the Act, or

[375] . Ibid ,Section 4(2).
[376] . *Good child v. Onwuka* (1961) All NLR.
[377] . Ibid Section 4(3).
[378] . Ibid Section 4(4).
[379] . Ibid Section 4(1).
[380] . Ibid Section 6(1)

ii. That the court of the foreign country that gave the judgment has no jurisdiction to give it, a domestic court may refuse to enforce the decision of a foreign court where it founds that the foreign court has no jurisdiction.[381]

iii. That the judgment debtor being the defendant in the proceedings in the court of the foreign country, did not (not withstanding that process may have been duly served on him in accordance with the law of the foreign country) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or

iv. That the rights under the judgment are not vested on the person by whom the application for registration was made.[382]

The registration may also be set aside if the registering High Court is satisfied that,the matter in dispute in the proceedings in the court of the foreign country had previously, to the date of the judgment in that court, been the subject of a final and conclusive judgment by a court having jurisdiction in that matter.[383]

The circumstances in which the court of the foreign country may be deemed to have a jurisdiction are:- [384]

i. If the judgment debtor being a defendant in the original court submitted to the jurisdiction of that court, by voluntarily appearing in the proceedings otherwise than for the purpose of protecting or obtaining the release of property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of that court; or

[381] . *Peenok Ltd*. (1982)12 SCI at 103.
[382] . Ibid ,Section 6(1).
[383] . Ibid, Section 6(2).
[384] . Ibid.

ii. If the judgment debtor was plaintiff in or counter claimed in the proceedings in the original court ;or

iii. If the judgment debtor being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the court of the country of that court; or

iv. If the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident, or being a body corporate had its principal place of business, in the country of that court, or

v. If the judgment debtor, being a defendant in the original court, had an office or place of business in a country of that court and the proceedings in that court were in respect of a transaction affected through or at that office or place.

If the application to set aside the registration is not granted, the Judgment creditor may proceed to levy execution. He will then apply for any of the writs for enforcing a judgment for payment of money. Following the same procedure mentioned in the previous chapter.

No proceedings for recovery of sum of money payable under a foreign judgment to which Part 1 of the act applies, other than to proceeding by way of registration of the judgment, Shall be extended by any court in Nigeria.[385]

[385] . Ibid Section 8.

CHAPTER FOUR

CHALLENGES OF ENFORCEMENT OF JUDGMENTS AND COURT ORDER IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY, ABUJA.

4.1 Introduction

The entire procedure of enforcement of judgments and court order in the High Court of the Federal Capital Territory, Abuja are bedeviled by some challenges which are not too different from the identified challenges confronting the administration of justice in Nigeria. This chapter will examine the major challenges associated with enforcement of judgment in the High Court of F.C.T., Abuja.

4.2 Stay of Execution

This is the application that most judgment debtors use to frustrate enforcement of judgments in the High court of the Federal Capital Territory, Abuja. this application will be fully discussed below.

This is the process of putting execution of judgments or courts order on hold until the determination of the motion for stay or appeal. It is also the suspension or postponement or halting of judgment or the like. [386]Where judgment has been given in a matter and the judgment is one that is capable of being enforced by execution, and if the unsuccessful party wishes to challenge the judgment on appeal, in order to preserve the subject matter of the suit, this is the first step he should take, which if granted, suspends the execution of the judgment until the determination of the appeal. Therefore the courts have the inherent

[386] . Bryan A. Garner (2009) *Black Law Dictionary* (7th ed.), West Publishing co. New York.

jurisdiction conferred by section 6 of the 1999 constitution to grant or refuse stay of execution. The superior courts have developed the following principles to guide all courts in their exercise of discretion in considering whether to grant or refuse an application for stay of execution.

4.2.1 Application for Stay of Execution

The application must show special, exceptional and strong circumstances to warrant an order of stay of execution. The applicant must plead sufficiently the balance of justice weighing in his favor. It is the balance of convenience that tilt the scale in determining whether to grant a stay of execution or not. Where the balance of convenience is not on the side of the applicant, the court will not grant a stay.[387]Furthermore, on special or exception circumstances which can justify an order of stay, the court of appeal in its recent decision in *Soyannwo V. Akinyemi,*[388]Mentioned instances that constitute special circumstances which would justify an order of stay:

i. Where the subject matter of the proceedings will be destroyed if stay is not granted
ii. Where execution will render nugatory any order or order of the court of appeal
iii. Where execution will foist on the court especially the court of appeal a situation of helplessness.
iv. Where the applicant cannot be retrieved to his status quo if the appeal succeeds.
v. Where the execution will paralyze the exercise by the litigant of his constitutional right of appeal.

[387] . *Olunlayo v. Adeniran* (2001)14 NWLR. (pt.734) p.699.
[388] . (2002) FWLR (pt.104) 592.

vi. Where the applicant has an important point of law or triable issue to argue in the appeal.

vii. Where there is an existence competing legal right recognizable by the courts which is threatened.

viii. Where the applicant can show that if the money is paid. The plaintiff will be unable to refund it in case the appeal succeeds, i.e. where the judgment is a money judgment. [389]

But where the judgment creditor is credit worthy and has the potential to refunds the judgment sum to him, a stay will not be granted. For instance, a government agency or a large commercial or industrial company is likely to be considered credit worthy enough. In *mobile producing Nigeria Untld. v.Monokpo*.[390]I was held that a foreign company not registered in Nigeria and not having any assets here could not be trusted to refund a judgment debt in the event of an adverse appellate decision.

In another closely related to the foreign is the principle enunciated by the court of appeal in its decision in *Nigeria Wire Industries Plc.v. Europeantrade & finance plc*.[391] The court held that where ever it is necessary for a court to base the exercise of its discretion on the true financial statement of a limited liability company, such a company should exhibit its annual financial statement. Thus, whenever a company claims to be in a position to fund a judgment debt.

ix. Where the appeal has great merit and that to enforce the judgment or order in the meantime will be ruinous the applicant. This is revealed by the weight of the grounds of appeal. The grounds of appeal should indicate that the applicant has an arguable appeal

[389] . *Martins v. Nicanner Foods Ltd.* (1988)2NWLR (pt.74)83.
[390] . (2001)18 NWLR (pt.744) 212.
[391] . (1997)6NWLR (pt.10) 632.

that has a real possibility, and not a probability of success. So threat where the chances of success are almost nil, an order of stay will be refused.

Note that poverty of a judgment debtor is not an adequate reason why an order of stay of execution should be granted. Where execution will financially cripple the applicant and render him incapable of funding the prosecution of his appeal, a stay will be granted. The policy behind this is to protect his constitutional right of appeal. [392]Also the court of appeal grant a stay of execution based on the plea of the applicant that he had no resources to pay the judgment debt and still prosecute the appeal.[393]

In every application for stay, whether in the high court or in the court of appeal, the affidavit in support of the motion should disclose enough materials on which the court will rely on to exercise its discretion one way or the other. Where the application is made in the high court, the applicant is probably entitled to assume that the court would rely on its own record of proceedings, including exhibits already admitted in evidence.[394]Where the application is brought in the court of appeal after it's refused by the court below, the following documents should be exhibited to the affidavit in support of the motion. The notice of appeal containing the grounds of appeal; a certified copy of the judgment appeal against; a certified true copy of the ruling or order by the high court dismissing the application for stay of execution and any other document that may be useful in the application.[395]

As seen in the general rule, filing of a notice of appeal is a condition precedent to the hearing and determination of an application for the stay of execution of judgments. But note that

[392] . *Nwabueze v. Nwosu* (1988)4NWLR (pt.88) 257.
[393] . *M.O. Kanu sons & Co v. FBN Plc* (1998)11 NWLR (pt. 527) 116.
[394] . *Nwanosike v. Udosen* (1993)4NWLR (pt.290)684.
[395] . Court of Appeal Rule (supra)p.18, Order 3, Rule 7(a)(b) and (c).

notice of appeal does not serve as a stay of execution except the court order.[396]Most appellant after filing notice of appeal without stay of execution think that, that notice of appeal is okay to stay there execution, which does not. But still in practice, once the chief registrar is serve with the notice of appeal, even if there is no stay of execution, the enforcement department will not enforce that judgment.

Notice of appeal is like a writ of summons or other originating process in the trial court the appellate court's jurisdiction can only be properly invoked upon the filing of a valid notice of appeal.[397]Exceptionally, however, it appears that an application for the stay of execution of a judgment can be heard and determined even though a valid notice of appeal has not been filed, provided there is a firm undertaking so to do.[398]Where applicant cannot appeal without leave, he could, while seeking the prayer for stay of execution. However, where a person is out of time to appeal, whether the appeal was as of right or with leave, he cannot possibly apply for a stay of execution since he has not been granted extension of time within which to seek leave. [399]Where an applicant was granted leave to appeal but went ahead to file his notice of appeal in the appellate court registry instead of filing it in the court below, its subsequent application for a stay of execution will be dismiss, because there was no valid notice of appeal on which the court could rely on in considering the application for stay.[400]

It is important to point out that where a person has notice of an application to court seeking to restrain him from a particular conduct or the court which is to enforce the judgment has notice of the application or the execution department has notice of the application, they are

[396] . Abuja High Court Rules, (supra)p.17, Order 43, Rule 24(7).
[397] . *Oladipo v. ACB* (1951)13 WACA 110
[398] . *Intercontractors Nig. Ltd v. U.A.C* (supra)p.52
[399] . *Kano Plastic Ltd v. Century Merchant Bank Ltd* (1998)3NWLR (pt.543)572.
[400] . 1bid.

effectively prohibited from going ahead to enforce the judgment until the hearing and determination of such application.[401]It may be safe to conclude that serving the copy of notice of appeal and a copy of stay of execution to the necessary parties and also the most important, the chief registrar and the enforcement department is very important because unknowingly the enforcement department can go ahead and enforce the judgment. Where the enforcement officers is executing the judgment of the court, the enforcement officers are to withdraw or put on hold the execution of the judgment if a copy of the notice of appeal or motion for stay has been presented to them at the point of execution. Where the copy of notice of appeal or motion for stay of execution was serve after the execution of the judgment, but before the release of the judgment sum to the judgment creditor, the chief registrar is to keep the judgment sum till after the determination of the appeal.

4.2.2 Time for Filing Application for Stay

It must be noted that there is no time limit. (subject to the provisions of the court of appeal act) as to when an application for stay of execution of a judgment of high court pending appeal can be brought at the court of appeal. A judgment debtor who fails to act timeously runs the risk of execution being levied against him.[402]Section 18 of the court of Appeal Act deals with stay of execution and it has provided no time limit for bringing an application for a stay of execution. An application for a stay of execution is a valid cause of action, which can therefore be determined to finality.[403]

[401] . *Ojukwu v. Governor of Lagos State* (1985)2NWLR (pt.10)106.
[402] . *Union Bank (Nig) Ltd v. Emole* (1991)9NWLR (pt.213)P.74.
[403] . *Nwokedi v. UBN Plc* (1997)8NWLR (pt.517)p.407.

It is important to notify the chief registrar and enforcement department by serving them with the order for stay of execution, so as to know whether to go ahead with the enforcement or not. This is evidence that shows the matter has been determined

4.2.3 Procedure for Bringing an Application for Stay of Execution

An application for stay of execution is first made to the trial court and once a judge of the high court grants the order for stay and such order of stay is enrolled, the judge becomes *functus officio* and cannot vary or re – write the order. It is only when the lower court has refused an applicant's application for stay of execution or where the applicant considers the condition imposed by the court for the grant of stay onerous that he can apply to the court of appeal seeking the same remedy.

An application for stay of execution of the judgment of a trial court is to be made first to the trial court.[404] An application for stay of execution of the judgment of the trial court can be made to the court of appeal in the first instance if there exist special circumstances which make it impossible or impracticable to apply to the trial court. The onus is on the applicant to show why the application was not heard at the lower court. In *Chief Olawunis & Ors. V. Mohammed &Ors.*[405] Where the erudite justice of court of appeal Tobi, JCA said "The word 'impossible' etymologically means that which cannot be done; that which is hopelessly unsuitable. The word 'impracticable' means that which is not able to be done".

Therefore, special circumstances must be the type that would be over whelming suffocating to the ideas of justice. It must be one in which unless the applicant acts promptly and come directly to the court of appeal a reparable and retrievable damage will be done to the res.

[404] .Court of Appeal Rules 1981, Order 3, Rule 3(4).
[405] . *Chief Olawunis & Ors. V. Mohammed* (supra) p.5.

Examples of cases where application could be direct to the court of appeal without first applying to the lower court are:-

a. Where the high court has indicated its unwillingness to hear application to discharge an order to show cause why the applicant should not be committed to prison.
b. Where a stalemate has been created
c. Where a court has shown a bent towards a certain matter and is not inclined to agree with a particular side as in the case where the trial court insisted on going on with the substantive matter notwithstanding the pendency of the application for stay.

The fixing of an application for over two weeks despite affidavit of urgency by the respondent will be dissipated before the application will be heard by the lower court.[406]

Note that, application for stay of execution shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution is bought.[407]

4.2.4 Effect of Order Staying Execution of Judgment

An order for stay of execution of judgment prevents the plaintiff or beneficiary of the judgment or order from putting into operation the machinery of law for the execution of the judgment. Once ordered, the parties are required to maintain the status quo and not to allow either party to take advantage of the litigation in dealings with the subject matter of the litigation. That is why it is important to take a copy of the order to the enforcement department which will notify them of the outcome of the motion and to avoid misled by the party who is eager to enforce the judgment.

4.3 Unnecessary Delay:

[406] . *FCMB Ltd v. Packoplast Nig Ltd* (2000)8NWLR (pt.669) 567.
[407] . Order 45 Rule 1 of the Abuja High Court Civil Procedure Rules, 2004.

There are a lot of factors responsible for the delay in the Enforcement of Judgment and Court Order in the High Court of the F.C.T., Abuja. This may includes:

a) Absence of a Judge who would sign the writ for execution example, by vacation, elevation, retirement or death of the Judge, or absence of the court registrar who would sign, tamp and seal the judgment certificate.[408]

b) Complex bureaucratic procedure for approval of enforcement by the Chief Registrar. This gives room for the judgment debtor to file motion for stay of execution.[409]

c) Police request by the court for security cover for the enforcement of court judgments and orders are served on the office of Commissioner of Police. Before the request passed the legal section for verification and reply to the relevant department of the force responsible for the deployment of men for enforcement, reasonable time would have been spent and can give room for the judgment debtor to stay the enforcement.[410]

4.4 High Cost of Enforcement:

It has been observed that judgment creditor may be discouraged from embarking on the enforcement procedure due to exorbitant financial implication of same. The judgment creditor may have to pay for every imaginable material and steps to be taken during the enforcement exercise, like mobilizing the court registrars to bring the enforcement file to the Enforcement Department which is situated at the main Head Quarter Maitama Abuja, bailiffs, police and transportation of the attached property to the court ware house. Therefore,

[408] Yusuf A. O. Procedure for the Execution/Enforcement of Judgment in Sharia and Area Courts. Paper Presented at the Conference Organized by Centre for Islamic Legal Studies Institute of Administration Ahmadu Bello University, Zaria, held at the Ahmadu Bello University, Zaria, December 30 and 31, 2015 at page 12.
[409] Ibid.
[410] Shehu U.U. The Indispensable Role of the Nigeria Police Force in the Execution of Judgment in the Sharia and Area Courts. Paper Presented at the Conference Organized by Centre for Islamic Legal Studies Institute of Administration Ahmadu Bello University, Zaria, held at the Ahmadu Bello University, Zaria, December 30 and 31, 2015 at page 7.

the judgment creditor may need to weigh the judgment value against the cost involved in enforcing the judgment especially where the judgment value is not substantial. At times the entire attachable properties of the judgment creditor may not even be enough to satisfy the judgment sum.

4.5 Corruption

The high level of corruption that pervades the Nigerian society also reflects the system and has negatively affected the enforcement procedure. The enforcement officers most often demand bribes before discharging their duties. Some of them may go to the extent of frustrating the entire process or compromise sensitive information where their demands are not met.

4.6 Paucity of Knowledge of court officials

Some of the court bailiffs who are saddled with the responsibility of carrying out the enforcement exercise know next to nothing about the procedures laid down by the Sheriff and Civil Process Act. Most of the bailiffs have not receive any training in that respect but do often rely on their experience which are gathered from trial by errors. This gives room for avoidable errors and mistakes in the enforcement exercise.

4.7 Auction Formalities and Ineffectiveness

Auctions involving appraisals, notices and sale of assets are all supervised by the court. The auction is more often than not unsuccessful due to lack of publicity, adequate and low expertise from the court officials conducting same. Most auctions in the High Court of F.C.T. are not conducted publically and properties are not sold to the highest bidder because of the

high interest on the property by the court officials. Delay in the auctioning of attached properties often lead to devaluation or even total destruction of the attached property, which are left in open places around the court premises thereby exposing the property to harsh weather condition (sun and rain). This delay is caused by motion for stay, appeal or interpleader summons in which sale most be suspended pending the determination of such application before sale is conducted

4.8 Resistance and Violence

Enforcement of judgments and orders in the High Court of F.C.T. in some cases lead to resistance or violence by the judgment debtor(s) themselves or some miscreants organized to frustrate both the courts officials, judgment creditor(s), and the security which if not properly managed can lead to breakdown of law and order.[411]

[411] Ibid.

CHAPTER FIVE

CONCLUSION AND RECOMENDETIONS

5.1 Summary

Enforcement of judgment is the last stage of judicial process after the legal right, claim or interest into judgment or order. The overriding function of judicial process of enforcement is to provide for the judgment creditor the fruits of his judgment. This will conform to the general principle of enforcement, that judgment order of court must be obeyed or complied with, or otherwise the authority of the court would be diminished and the legal order would suffer a breakdown in the FCT Abuja and the entire Nigeria.

Therefore, it is the duty of the deputy sheriff who is acting on behalf of the sheriff, the bailiff and the police (for assistance) to perform such restricted functions as are prescribed by law, particularly, the Sheriffs and Civil Process Act. Where they acted on the contrary the Act make provisions for their liabilities. All judgment or court order in the FCT High courts and Magistrate courts are send to the Chief Registrar (deputy sheriff) for her approval to enforce the judgment by the enforcement department.

In every enforcement of court judgment or court order, there must be parties to execution, that is the judgment creditor and the judgment debtor, who initiate the process of execution. Enforcement of judgment can be against the individual, Government, institutions, company or banks. Once a writ of attachment is sign against any of the above, execution will be levied against either of their movable or immovable properties. Once attachment have been made against the judgment debtors property, and there is no any third party claiming any right or interest to it through interpleader summons, certain time limit must elapse before the sale of

each property by auction as provided under the Act.. The sale of perishables is carried out instantly, Five days for movable property, fourteen days for immovable property. The proceeds of the sale are then released to the judgment creditor.

Enforcement of judgment is carried out in any place, it can be within the division or outside the division, within the jurisdiction or outside the jurisdiction, within the country or outside the country. But where the execution of judgment have been stayed or went on appeal, no execution of that judgment will be carried out until the final determination.

5.2 Findings

In view of the foregoing the following findings are made:

i. That there is the centralization of the Enforcement Department in the High court of the Federal Capital Territory, Abuja, made enforcement of judgment more expensive and difficult. All enforcement files are brought to the Enforcement Department at Maitama Abuja. Not minding the far distance other High Courts that are around Kuje, Gwagwalada, Abaji, Bwari and Karu, which makes the mobilization of registrar of the court to bring the enforcement file to the enforcement department more expensive.
ii. That most of the enforcement officers are corrupted, enforcement of judgments are sometimes abused by lawyers and staffs of the court. They sometimes demand bribe, notify the judgment debtor about the judgments against him that make the judgment debtor file stay of execution even if he has no good to frustrate the enforcement.
iii. That there is lack of working facilities for the department to carry out the enforcement, examples are mobility for the enforcement officers, crane, toying vans and truck to convey attached properties to the court.

iv. That there is lack of insurance for the enforcement officers, because of the high risk involve in enforcing the judgment, as their lives are at risk because most judgment debtors turns out to be violent, and in most cases the bailiffs get injured by the judgment debtor.

v. That there is lack of adequate provisions for workshops and seminars for registrars, bailiffs, enforcement officers and lawyers, for proper implementation of the provisions of the law, in the enforcement of court judgments and orders in the territory.

vi. That there is lack of public awareness for the implication of obstruction of court judgment or order. This lead to obstruction of court judgments and order by the Government, and other institutions and also by our local people.

vii. That there is Inadequate provisions of law and lack of practice direction on sale of attached property that are subject to appeal. These properties are expose to harsh weather for so many years, waiting for the determination of the appeal. This devalue or completely destroyed the properties at the end of the appeal, both the judgment creditor and the judgment debtor are at lost.

viii. That there is lack of provisions for serious punishments in the Rules for obstruction of court judgments. Most of the fines provided by the Rules are less than Five Hundred Naira.

5.3 Recommendations

In view of the above observations, the following recommendations are made:

i. There should be the establishment of enforcement and execution department in all courts in Nigeria, to avoid the abuse of enforcement of court judgment and order by the court staffs and the realization of successful executions.

ii. Enforcement Department should be decentralization to various parts of the F.C.T. High Courts and magistrate courts Abuja. Both the High court's and the Magistrate courts should have execution and enforcement unit for the judgment creditors to enforce their judgment at a lower cost

iii. There should be adequate provisions for working facilities like crane, toying vans, truck and also mobility's for the enforcement officers in discharge of their duties. Those items mentioned are for the conveyance of the attached properties to the court warehouse.

iv. There should be adequate protection and also insurance to the enforcement officers because of the high risk involve in enforcing court judgment.

v. There should be adequate provision for workshops and seminars for the court registrars, bailiffs, enforcement officers and lawyers by the Court and Nigeria Bar Association.

vi. There should be involvement of the media in creating awareness. These should involve the journalist, through Radios and TV and also local leaders. And obstruction of court judgment and order should be made a criminal offence liable to conviction.

vii. Adequate provisions of law and practice directions by the Honorable Chief Judge of the FCT High Court, on the sale of attach properties that are subject of appeal and are left under the sun and rain for so many years till after the determination of the appeal. At the time of the outcome of the appeal, those properties are not worth the judgment sum if it is in the judgment creditor's favor, but if it is in the judgment debtor's favor, he cannot get his properties in the same position as the time they were attached.

viii. There should be amendment of section 28 and 69, of the Sheriffs and Civil Process Act, which provide fine, not exceeding 100 naira as punishments for obstruction of money judgments by

judgment debtors. And Order 1 Rule 16, of the Judgment Enforcement Rules, that provide for fine of 100 naira for bailiffs who fail to comply with the provisions of the Rules. Also, Oder 5 Rule 5, of the Judgment Enforcement Rules, that provides for consent of the Attorney General of the State or Federation before enforcing against the Government. Once these provisions of the law are not amended, by providing serious punishment for obstruction of money judgments and noncompliance with the provisions of the Rules, there will be series of obstruction of money judgments by judgment debtors' noncompliance by Court bailiffs in enforcing court judgments.

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