



Practical Challenges to the Enforcement of Judgements in Nigeria

Kaananwi P. Luke* & Dr. Nuleera A. Duson**

ABSTRACT

Applicable laws on enforcement of judgement allow a successful litigant to enjoy the fruit of his judgment, which is the final determination of rights and obligations of the parties before a competent court of Law. The courts deliver different types of judgement and the law also provides for different modes of enforcement of judgments. This article examines the practical challenges to the enforcement of judgments in Nigeria. These include: procedural, reciprocity and public policy issues, disobedience to court order, death of parties to the action, jurisdiction of the court, delay in issuance of court orders, abuse of court process, high cost of execution of judgment, corruption and problem of enforcement of judgments against government and its agencies. In order to enhance the effective enforcement of judgments in Nigeria, this work recommends a change in attitude by government and its agencies, access to justice and compliance with court orders.

Keywords: enforcement, rights, obligations, judgement creditor, judgement debtor

1. INTRODUCTION

The Constitution¹ provides that any person who alleges that his rights have been or likely to be contravened in any state may apply to a High Court in the State for redress. Consequently, where a party initiates a cause of action against another party, a competent court shall hear and determine the respective claims in the action before it and make appropriate orders. Such orders or equitable decree that determines the rights and obligation of the parties in a case is referred to as judgment. The court has inherent powers derived from the constitution to determine the rights of citizens and give appropriate decisions or orders. The courts can issue directions for the purpose of enforcing or securing the enforcement of its judgments². Where there is disobedience to judgement or order of the court, the successful party can initiate enforcement proceedings according to the provisions of the law on enforcement of judgment. The enforcement procedure is replete with impediments or challenges which is the fulcrum of the article.

2 Conceptual Clarifications

2.1 Judgement

Judgement has been defined as a court's final determination of rights and obligations of the parties in a case. It includes an equitable decree and any order from which an appeal lies³. The Supreme Court has made pronouncements on the meaning of judgment. In *Western Steel Works Ltd and Anor v. Iriion Steel Workers Union of Nigeria*

*MA, LL.M, BL, Legal Practitioner, Ph.D Candidate in Law (ABSU), formerly Part-time Law Lecturer, Ken Saro-Wiwa Polytechnic, Rivers State.

** Ph.D (Nig). BL, Lecturer, Department of Law, Institute of Legal and Global Studies, Captain Elechi Amadi Polytechnic, Port Harcourt, Email: naduson@yahoo.com.,08035525300.

¹ See section 46 (1) CFRN 1999 as amended

² See for instance, section (6) (6) (a-b) CFRN 1999, which vests judicial powers of the federation in courts established by the constitution.

³ Bryan and Garner (eds) Black's Law Dictionary eight Edition. USA, Thomson West, 2004

& *Anor*⁴, the court held that by Section 277 of the 1979 Constriction⁵, a decision of a court means any determination of the court and it includes judgment, decrees, conviction, sentences or recommendations. It is immaterial whether and expression order, judgment, or “ruling” is used. Each is a decision of court.

Similarly, in *Saraki v. Kotoye*⁶, judgement was defined as binding, authentic, official and judicial determination of the court in respect of claims and in an action before it. In relation to criminal proceedings, the Supreme Court in *Joseph Ejelikwu v. The State*⁷ defined judgement as: the entire reasoning culminating in the finding of guilt, the conviction and pronouncement of the punishment which is the sentence. It is not merely the conclusion of a trial judge. Judgement also includes any decree or order given or made by a court in a suit, whereby any sum of money is made payable or any person in required to do or not to do any act or thing other than payment of money⁸ It is discernable from the definitions that judgement means a decision by a competent court on matters submitted to it, which is conformable to law and justice. A competent court presupposes that all the conditions precedent for instituting any action must be fulfilled⁹.

2.2 Enforcement

Enforcement is derived from the verb ‘enforce’ which means to give force or effect to or compel obedience to law. According to Bryan and Garner¹⁰ enforcement means: the act or process of Compelling compliance with a law, mandate, command, decree or agreement. The courts have interpreted enforcement to mean execution of judgment. In *Re-overseas Aviation Engineering (GB)*¹¹, Denning held that execution means quite simply, the process for enforcing or giving effect to the judgement of the court. In *Government of Gongola State v. Tukur*¹², it was held that by execution of a judgment, it is meant the enforcement of the judgment, that is, giving effect to it. It is the process whereby a judgement or order of a court is enforced or given effect to according to law.

It is obvious that if a judgement of a competent court is not enforced, it loses its effect. Enforcement of judgement is the final stage in a litigation process. The constitution does not define enforcement but the power to enforce a judgement of a court is derived from the constitution¹³. The Supreme Court¹⁴ summarized different modes of enforcement of judgement which include garnishee proceeding, judgement summon, writ of fieri facia, writ of sequestration, writ of possession. Other methods include: auction sales, winding up proceedings, arbitral awards receivership, bankruptcy Proceeding and charging order.

3.0 Legal Framework

There are two federal laws regulating the enforcement of judgments in Nigeria, Reciprocal Enforcement of judgement Act¹⁵ and Foreign Judgments (Reciprocal Enforcement) Act¹⁶. The Supreme Court¹⁷ held that the Re-

⁴ NWLR (Pt. 30) page 619 para H

⁵ Same as section 318 CFRN (1999) (as amended) (1992) 9 NWLR (pt. 264) 156

⁶ 1992 9NWLR (Pt. 264) 156

⁷ See part VII, Section 95 Sheriffs and Civil Process Act Cap S 6 LFN 2004

⁸ (2000) 4 SC (Pt. 11) 1

⁹ See *Madukolu v. Nkemdilim* (1962) SCNLR 341.

¹⁰ Bryan and Garner (n3)

¹¹ (1963) Ch, 24 pp. 39 - 40

¹² (1989) 4 NWLR (Pt. 117) 592 at 608

¹³ See for instance, section 287 (1-3) CFRN which provides that the decisions of the Supreme Court and other courts listed in the constitution shall be enforced in any part of the federation by an authorities and persons and by courts with subordinate jurisdiction to the Supreme Court.

¹⁴ See *Government of Gongola State v. Tukur* supra (n12)

¹⁵ 1922 Cap 175 LFN 1958 also known as the “1958 Ordinance” is now codified as Sheriff and Civil Process Act Cap S6 LFN 2004.

reciprocal Enforcement of Judgments Act deals with the issue of registration of judgments obtained in Nigeria and United Kingdom and other parts of Her Majesty's dominion and territories. It was also held that the Foreign Judgments (Reciprocal Enforcement) Act¹⁸ did not specifically repeal the 1958 Ordinance. This means that the Foreign Judgments (Reciprocal Enforcement) Act¹⁹ is still applicable to the United Kingdom and to parts of Her Majesty's dominion to which it was extended by proclamation under section 5 of the '1958 Ordinance' before the 1990 Act came into force.

Apart from the two federal laws cited above, there are other laws that are relevant to the enforcement of the different types of judgement discussed in this article. These include:

- (i) Constitution of the Federal Republic of Nigeria 1999 (as amended)²⁰
- (ii) Sheriffs and Civil Process Law of each state of the Federation of Nigeria
- (iii) Judgments (Enforcement) Rule 2011²¹
- (iv) Companies and Allied Matters Act²²
- (v) Winding up Rules 2001²³
- (vi) Arbitration and conciliation Act²⁴
- (vii) Sales by Auctions Act
- (viii) Administration of Criminal Justice Act, 2015,
- (ix) Auctioneers Law of each state of the Federation²⁵
- (xi) Supreme Court Rules 1985 (as amended in 1999)
- (xii) Court of Appeal Rules 2016
- (xiii) Rules of High Court of each state of the federation
- (xiv) Bankruptcy Act²⁶
- (xv) Customary Court of Appeal Rules of each state of the federation

4.0 Challenges of the enforcement of Judgments in Nigeria

Oputa²⁷ captured the essence of enforcement of judgement when he said that execution is really the last stage of a suit, the stage or process whereby the winning party reaps the benefits of the judgement in his favour by obtaining possession of anything adjusted to him by the court. Babalola²⁸, contends that the overriding function of the judicial process of enforcement is to provide the judgement creditor the fruits of the judgment, to obtain for him, due satisfaction, compensation, restitution, performance or compliance with what the court has granted by way of remedy or relief. Olagunju²⁹ observed that execution of judgement is underscored by the fact that it is the end result of litigation in which the dispute between the parties submitted for adjudication was canvassed and resolved leading to a decision on the rights and obligations of the parties arising from the contest which the victorious party is *ex debito justitiae* entitled to enforce. The parties to the enforcement of judgement are the judgement creditor (any person for the time being entitled to enforce a judgment) and the judgement debtor (a person liable under a

¹⁶ 1961 Cap 152 LFN 1990 also known as "the 1990 Act" is not codified as Foreign judgments (Reciprocal Enforcement) Act F35 LFN 2004.

¹⁷ *Macaulay v. R.Z.B of Austrian* (2003) 18 NWLR (Pt. 852) at 282 at 296; (2004) FWLR (Pt. 192)

¹⁸ 1961 Cap 152 of 1990

¹⁹ Cap F35 LFN 2004

²⁰ C23 LFN 2004

²¹ Cap S 6 LFN 2004

²² Cap C20 LFN 2004

²³ Cap S 6 LFN 2004

²⁴ A 18 LFN 2004

²⁵ Cap 549 LFN 1990

²⁶ B2 LFN 2004

²⁷ *Government of Gongola State v. Tukur* supra (n12) p. 605

²⁸ A. Babalola., *Enforcement of Judgments*. Ibadan, Afe Babalola Publisher, 2003

²⁹ S. A Olagunju., "Execution of judgment" in Yakubu, Y.A. (ed) *Administration of Justice in Nigeria. Essays in Honour of Hon. Justice Mohammed Uwais*. Lagos, Mathouse Press Limited, 2000.

judgement and the debtor to the judgement debtor (Garnishee). The challenges to the enforcement of judgement are discussed seriation.

4.1 Enforcement of Intra-State Judgments

Intra-state judgments involve the enforcement of a judgement delivered in a court in another judicial division or district in the same state. The Procedure is that the Registrar of the court that issued the writ of execution is required to send the process to be executed to his counterpart in the division or district where the process is to be executed. The process is accompanied by a warrant in Form II authorizing the execution and the Registrar will authenticate it as if it was issued by its court³⁰. The effect is that, the court in which the certificate of enforcement of judgement has been registered shall have the same control and jurisdiction over the judgement as if the judgement was judgement of that court. The court has the power to make order for a stay of execution of the property for such time and upon such terms as the court may deem fit³¹.

4.2 Enforcement of Inter-State Judgments

A judgement delivered in Rivers State can be executed in Abia State if the judgement is registered in Abia State and entered by the Registrar in a book called “the Nigerian Register of Judgments” as if it was delivered in Abia State. Upon payment of prescribed fees assessed by the court, the judgement creditor is required to obtain a certificate of judgement from Rivers State issued by the Registrar of the Court. The judgement certificate will not be issued to the judgement creditor unless he files an affidavit in Rivers State that will evidence that the amount is due and unpaid, and satisfies that the act ordered to be done remains undone or that the person restrained from doing an act disobeyed the order³².

A challenging situation is eminent where the court makes order for a stay of enforcement proceedings. Although, the order of stay of proceedings is to enable the judgement debtor to provide security for the satisfaction of the judgement debt, the effect is that the order may be made on other terms outside the judgement as the court may deem fit³³. The court can also set aside the judgement³⁴. In criminal matters, an application for stay of proceeding shall be refused by the court. Moreover, all the enforcement proceedings, that have taken place in the registration court shall be communicated promptly by the registration court to the court that gave judgment. In *Electrical and Mechanical Construction Co. Ltd v. Total Nigeria Ltd & Anor*³⁵, the Supreme Court held that it was proper for the Registrar of the Lagos High Court, wherein the judgement creditor had registered a certificate of the judgement obtained by him at the Kaduna High Court, to notify the Kaduna High Court that the judgement had been satisfied in Lagos.

4.3 Enforcement of Foreign Judgments

Pointedly, only the judgement of a superior court of a foreign country may be enforced in a High Court in Nigeria. The procedure is that, a judgement creditor may apply to a Superior Court in Nigeria at any time within six years after the date of judgement or after the date of last judgement (where judgement was appealed) but an appli-

³⁰ Section 37 and 108 Sheriffs and Civil Process Act Cap S6 LFN, 2004.

³¹ Ibid Section 23

³² Section 107 Sheriffs and Civil Process Act Cap S 6 LFN, 2004.

³³ Ibid Section 109.

³⁴ See section 306 Administration of Criminal Justice Act, 2015.

³⁵ (1972) 1 ALL NLR (Pt. 2) 293

cation may be made for registration within twelve months from the date of judgement or such longer period as may be allowed by the Court³⁶. It should be noted that the judgement will not be enforced unless: it is a final judgement delivered by a court of competent jurisdiction, the judgement is for a definite sum, the judgement debtor was properly notified of the commencement of the court of origin's proceedings and the judgement is not obtained by fraud³⁷

In South Africa, a foreign judgement is not directly enforceable. A foreign judgement constitutes a cause of action that will be enforced by South African courts subject to the requirements spelt out in the case of *Jone v. Krook*³⁸. It is submitted that the procedures involved in enforcement of inter-state and foreign judgement are complex, time wasting, and prohibitive. A judgement creditor can abandon the enforcement of his judgement due to complex foreign policy. Weems³⁹ identified the challenges associated with the procedures of enforcement of foreign judgements as follows:

- (i) The foreign country may require the Judgement to be converted into local currency which may or may not render the Judgement creditor whole as applicable in United States, Malaysia, United Arab Emirates
- (ii) The foreign country may not allow the losing party to appeal the court's decision against foreign money Judgement (applicable in Spain, Chile, and Venezuela)
- (iii) The foreign country may require a Government Official or Agency to approve or give an opinion on the legality of enforcement (applicable in South Africa, Venezuela, Israel, Mexico, Spain)
- (iv) The foreign country may refuse to hear non-resident judgement debtor who has assets in the foreign country (applicable in Cyprus and Brazil).

4.4 Limitation Period of Enforcement of Judgments

The statute of limitation of a country may affect the enforcement of a judgment. In Nigeria, a foreign judgement may be registered within twelve months from the date of the judgement or any longer period allowed by the registering High Court in Nigeria⁴⁰. More so, a judgement creditor may enforce judgement in a superior court within six years after the date of judgement including the last date of a judgement that was given on appeal⁴¹. Again, the limitation laws of each state in Nigeria also stipulate the limitation period for the enforcement of judgments. In Rivers State, no action shall be brought upon any judgement or on the interest on any judgement debt after the expiration of ten years from the date on which the judgement becomes enforceable or the interest becomes due as the case may be⁴². In South Africa, the judgement claims are usually extinguished after three years⁴³. In Lagos State⁴⁴, the limitation period is 12 months from the date the judgement becomes enforceable.

³⁶ Macaulay V. R.Z.B. of Austria, supra (n17) p. 599

³⁷ Section 6 of the Foreign Judgement (Reciprocal Enforcement) Act Cap F 35 LFN 2004.

³⁸ 1995, 677 (4). These requirements include: the court must have jurisdiction and internal competence, the judgement must not be contrary to South Africa Policy etc.

³⁹ R.P. Weems, "Guideline for enforcing money judgments Abroad" <http://www.kslaws.com> accessed on 3/10/2020

⁴⁰ Macaulay V. R.Z.B. Austria (n17) P.599

⁴¹ Section 4(1) Foreign Judgement (Reciprocal Enforcement) Act Cap F35 LFN, 2004

⁴² Section 13(1) Limitation Law of Rivers State Cap 80. Vol. 4 LRSN 1999

⁴³ See section 11(d) and 12(3) the Prescription Act 68 of 1969

⁴⁴ Section 12(2) Limitation Law of Lagos State Cap 118 LLS 1994; see also J. Amadi, Limitation of Action. Statutory & Equitable principles Vol. II, pearl publishers, Port Harcourt, 2011.

Although, a judgement creditor can recover debt from the government by way of garnishee proceedings, no garnishee proceeding shall be commenced before the expiration of 90 days after the date of judgement where appeal has not been lodged against the judgment⁴⁵. This implies that a judgement creditor cannot enforce a garnishee proceeding against government until after 3 months of judgement where there is no appeal against it. Consequently, a judgement creditor will “stay execution” of the garnishee order, if there is an Appeal against it.

4.5 The Issue of Reciprocity

Historically, several foreign countries would enforce a foreign judgement in their country if their own judgement will be enforced in that country. Nigeria requires reciprocity in enforcing foreign judgment. For instance, foreign judgement cannot be enforced in Nigeria if it appears to the Minister of Justice that a foreign court does not accord respect of recognitions and enforcement to judgments given by superior courts in Nigeria. Accordingly, the Minister of Justice may by order direct that foreign monetary judgments should not be enforced in any court in Nigeria where the foreign judgement was obtained in a country that does not accord recognition to a judgement delivered by a superior court in Nigeria.⁴⁶

4.6 Enforcement of Judgments against Government

In Nigeria, the judicial powers of the Federation vested in the courts extend to all matters between persons or between government and any person relating to the determination of any person’s right. This means that judgement can be executed against the government. A copy of a judgement against the Federal or State government is sent to the Attorney- General of the Federation or State for his consent. In Rivers State, no execution shall be issued against the government unless a copy of the order is sent to the Attorney-General and the Accountant General respectively. The state proceeding law stipulates that if the order is for the payment of money, the Attorney-General shall direct the payment of the amount awarded by the order and in the case of any other order, he may take such measures necessary to cause the order to be carried into effect. He may also direct the filing of an appeal against any order.⁴⁷ In *Government of Gongola Sta. v Tukur*, it was held that it is difficult to enforce a judgement against government as no coercive sanction may be necessary for a government to obey its own order.⁴⁸

It is challenging to enforce a garnishee proceeding in monetary judgement against the government or its agencies. The reason is that the consent of the Attorney-General of the Federation or State is required for a judgement creditor to attach the fund that is under the control of the ‘public officer.’ It implies that the ‘public officer’ can withhold his consent or apply to the court for a stay of execution of the judgement sought to be enforced. The result is that the judgement creditor suffers. Another challenging situation is where the Constitution⁴⁹ stipulates that no moneys shall be withdrawn from the consolidated revenue fund of the state except to meet the expenditure authorized by an appropriation law. The implication is that, if there is no provision or sufficient provision for the payment of judgments debts in the appropriation law of the state, the State government or its agencies may refuse to pay judgement debts. However, the court has declared that Section 84 of the Sheriffs and Civil Process Act⁵⁰ does

⁴⁵ Section 6(2) (3) State Proceedings Law Rivers State Cap 127 LRSN 1999 Vol. 6

⁴⁶ Section 12(1) (2) (3) Foreign Judgments (Reciprocal Enforcement) Act Cap F35 LFN 2004.

⁴⁷ Section 6(1) State Proceedings Law Rivers State Cap 127, LRSN 1999 Vol. 624.

⁴⁸ *Government of Gongola State v. Tukur* (n12) p. 592.

⁴⁹ Section 12(2) and 3 CFRN 1999 as amended.

⁵⁰ Cap S 6 LFN 2004.

not apply to garnishee proceedings against government. That means that any application by the 'public officer' for a stay of execution of a monetary judgement under garnishee proceeding would be refused by the court⁵¹. Babalola,⁵² argues that funds in the Consolidated Revenue Fund could be attached in the same way funds belonging to the State would be attached and that sections 12 1(2) and (3) and sections 6(6)(a) of the 1999 Constitution of Nigeria should be read together to appreciate the powers vested in the Court to attach funds in the Consolidated Revenue Fund.

4.7 Jurisdiction and Public Policy Issue

In Nigeria, the registration of judgement may be set aside, if the court of the country or the original court had no jurisdiction in the circumstances of the case or the enforcement of the judgement would be contrary to public policy in Nigeria⁵³. In Israel, the relevant question is whether the court of origin had jurisdiction according to Israeli standards of private international law. In France, India and Mauritius, judgement may not be enforced if a foreign country applied the incorrect law under the foreign country's conflict of law analysis⁵⁴. In South Africa, judgements relating to property situated in South Africa will not be enforced in South Africa because the foreign court would not have jurisdiction over immovable property situated in South Africa. However, a foreign judgement relating to moveable property will be recognized in South Africa if the moveable property was within the foreign court's jurisdiction at the commencement of the foreign court's jurisdiction.⁵⁵

4.8 Order of Stay of Execution of Judgment

Another challenge against the enforcement of judgement is that a judgement debtor who is not satisfied with the judgement of the trial court may apply for an order of stay of execution against the judgment. An order of stay of execution of judgement is the 'suspension of rights' which a court had declared in favour of the judgement creditor and the preservation of property pending the determination of an appeal from a judgement in respect of that right or property. The whole essence of an order for stay of execution is that the court is ever mindful to preserve the res and ensure that at the end of the day, the appeal is not rendered nugatory⁵⁶. The implication of a stay of execution is that once the order is given, the parties are required to maintain the *status quo* and not to allow either party to take advantage of the litigation⁵⁷. The result is that the stay of execution prevents the beneficiary of a judgement order from putting into operation the machinery of the law either the legal process of warrants of execution and so forth.⁵⁸

4.9 Delay in Issuance of Certified True Copy of Judgments

Statutorily, a judgement of the court shall be enforced with the leave of the court after the expiration of three days from the day on which judgement is given and if the judgement relates to writ of possession of land, it should be

⁵¹ *Purification (Nig.) Ltd V. Attorney General of Lagos State & Ors* (2004) NWLR (Pt. 899) 665. See also *UBA V. Ekanem* (2010) 6 NWLR (Pt. 1190) 207.

⁵² A. Babalola, *Enforcement of Judgments*. Ibadan. Afe Babalola Publishers, 2007.

⁵³ Section 6(1), (2) Foreign Judgement (Reciprocal Enforcement) Act Cap F35 LFN, 2004.

⁵⁴ R. Wakefield, 'South Africa' www.google.com.ng accessed on 8/3/2020.

⁵⁵ R.P. Weems., (n39)

⁵⁶ *Diamond Bank Ltd v. Pico Ltd* (2000) 1 NWLR (Pt. 703) 759

⁵⁷ *Mobil Oil Ltd v. Agadaigho* (1988) 2 NWLR (Pt. 77) 383

⁵⁸ *T.S.A. Industries v. Kema Investments Ltd* (2006) 3 MJSC 1 at P. 3 Ratio 1

enforced after 14 days where no date was fixed by the court.⁵⁹ More so, the constitution⁶⁰ stipulates that the court or tribunal shall keep record of proceedings and the accused person or any person authorized by him shall be entitled to obtain copies of the judgement in the ease within seven days of the conclusion of the ease. In spite of the above statutory provisions, Certified True Copies of judgments in most courts in Nigeria are not given to the affected parties as at when due. In majority of cases, it takes about three months or more to obtain a Certified True Copy of a judgment. Sadly enough, no writ of execution can be levied without a Certified True Copy of Court order or judgment. Regrettably, the courts in Nigeria write in long hand and the courts are congested with cases with several rulings and judgments to deliver after the conclusion of a case in an environment devoid of information communication technology. The devastating effect is that the judgement creditor cannot obtain certified true copy of the judgement several months after the judgement was delivered. Enforcement or execution becomes difficult. It has been observed that while the judgement creditor is 'waiting for the release of Certified True Copy of judgment,' the Judgement debtor may remove the property to be attached from the jurisdiction thereby creating an impediment to levy execution against the property.

4.10 Cost of Execution of Judgement and Corruption of Court Officers

The judgement creditor is faced with the problem of providing fund for the successful execution of the judgement order. The judgement creditor is expected to pay prescribed fees to the Registrar of Court and provide logistic support to the Sheriffs and the Police for a successful execution. In most cases, the Sheriffs and the Police officers take advantage of the judgement sum or value of the property to be attached and charge unnecessary fees to carry out their lawful duties. A Sheriff that has compromised standard will inform the judgement debtor of the pending execution and the judgement debtor may either remove the property from the jurisdiction or approach the court for stay of execution ahead of the writ of execution to be levied by the judgement creditor.

In sale by auction, the auctioneer is expected to pay the gross proceeds into the court including payment for the Sheriffs, Bailiffs, Appraisers and expenses of sale to the Auctioneer.⁶¹ In practice, it is observed that after payment to all the officers of the court specified above, the amount left will not be sufficient to satisfy the judgement debt. Pointedly, a declaratory judgement or Order merely declares the right of parties and is dormant. It has no force of execution and cannot therefore be obtained⁶². Therefore, a party who obtained a declaratory order will need to initiate a fresh proceeding to seek injunctive reliefs to enforce his rights or protect the threat to or violation of the right so declared in the judgement or order. Clearly, the fresh or separate proceedings are associated with prohibitive cost, delay in proceedings and delivery of judgement and cost of enforcing the new judgment.⁶³ Worst still, the judgement creditor is in a dilemma of enforcing a judgement sum of N90,000 where lie is expected to spend more than N90,000 on filling fees, service of process, lawyers professional fees and others to initiate a fresh proceedings or enforce an existing judgement in his favour.

⁵⁹ Order IV (1), (2) Judgments (Enforcement) Rules 2011 Cap S 6 LFN, 2004.

⁶⁰ Section 36 (7) CFRN 1999.

⁶¹ Order VII Rule 5 (c) Judgement (Enforcement) Rules 2011 Cap S 6 LFN, 2004.

⁶² A. Babalola., *Injunction and Enforcement of Orders*, (2003), Ile-Ife Obafemi Awolowo University Press Ltd.

⁶³ (1997) 5 NWLR (Pt. 503) 609.

4.11 Disobedience to Court Order

A judgement debtor may refuse to attend court upon being summoned or neglect to comply with the decision of the court, especially in monetary judgment. A Garnishee may refuse to disclose facts or money in his possession which can be used to satisfy the judgement debts.⁶⁴ It is common for a garnishee Bank to transfer fund from the accounts of the garnishee to another account to frustrate a garnishee proceedings against a judgement debtor. A judgement debtor may also remove movable property from jurisdiction thereby creating an impediment to levy execution against the property. In the above instances, the judgement creditor is faced with the challenge of a fresh action, He may initiate fresh committal proceedings against a judgement debtor who disobeys court order or neglects to pay judgement debt. At the end of the fresh action, the court may commit the judgement debtor to prison but the judgement debt is still left unpaid. Imprisonment is only a punishment but the debts remained unsatisfied.

The Executive arm of government often disobeys court order. On January 13, 2014, a Federal High Court Abuja presided over by Justice Ademola gave an order directing the 36 state governors of the federation to pay any amount in the consolidated revenue fund of the state meant for the judiciary directly to the heads of courts concerned in consonance with the provisions of the constitution.⁶⁵ Sadly, no state governor complied with the order of Justice Ademola and the judiciary staff union of Nigeria (JUSUN) embarked on an indefinite strike in July 2014 wherein all the state courts in Nigeria were closed.

4.12 Enforcement of Arbitral Awards

Arbitral award is a decision of the arbitrators given at the end of the arbitral proceedings. It is binding and enforceable by the court like any other decision of the court. The enforcement of local awards in a foreign country will depend on whether the award complies with the requirements of the laws and rules of procedure of arbitral awards of the country where enforcement is sought and whether the contracting state has reciprocal legislation recognizing the enforcement of arbitral awards in Nigeria.⁶⁶ In England, a foreign arbitral award will not be enforced if the enforcement is contrary to public policy or if the award has been annulled in the country in which it was made.⁶⁷ Similarly, the court may refuse to enforce an award in Nigeria which has been suspended by a court of the country where the award was made.⁶⁸ Another challenge is that a party to an arbitration agreement cannot ask the court to set aside a decision in the arbitration agreement or stay proceedings, once he has taken other steps in the proceedings.⁶⁹

⁶⁴ For instance paragraph 8(h) (i) (iii) High Court of Rivers State Practice Direction No. 2 2013 provides that the judgement creditor should obtain a certificate of verification on the Garnishee Bank to verify the account of the judgement debtor, failure in which he garnishee application shall be struck out.

⁶⁵ Section 121(3), 162(9) CFRN 1999 (as amended) in 2011

⁶⁶ *Ezerioha V. Ihezua* (2007) ALL FWLR (Pt. 540) 1204: see also section 54 (1) (a-b) Arbitration and Conciliation Act A 18 LFN, 2004.

⁶⁷ L. Hailsham, (ed) Halsbury's Laws of England 4th Edition, Vol. 11 London, Butter Worth, 1973

⁶⁸ See generally section 59 (1) (2) Arbitration and Conciliation Act A 18 LFN, 2004 where incapacity of a party to the agreement, proper notice of proceedings, decisions on matters beyond the scope of the submission to arbitration may hinder enforcement of an award.

⁶⁹ See also *Nissan v. Yaganathan* (2010) 4 NWLR (Pt. 11830 P. 135 at 156 (para G-H, where conditional appearance will not amount to taken other steps in the proceedings.

4.13 Execution of Death Sentence

Death sentence is prescribed for persons convicted of capital offences like murder, culpable homicide, treason and armed robbery.⁷⁰ Death sentence is lawful and mandatory in Nigeria and cannot be regarded as degrading or inhuman treatment.⁷¹ Because of its mandatory nature, the court does not have the discretion to impose any other penalty upon conviction even where a plea of *allocutus* is made by the defendant. Unlike other forms of enforcement of judgment, execution of death sentence is the prerogative of the state. The Court that pronounced the death sentence is expected to transmit a Certified True/Copy of the record of proceedings at the trial, a copy of Certificate of death sentence of a named person, a report containing recommendations and observations on the trial of the convicted person to the Minister or Commissioner who may recommend the judgement of the Court for execution subject to the confirmation by the president or governor.⁷² The president may also delay to pardon any convict.⁷³ There are procedural delays in transmitting report of convicted person by the court to the president or governor.

Another challenge is lack of political will to enforce the death sentence by the president or the state governor. Most state governors are reluctant to enforce a death sentence pronounced by the court on religious or political considerations. Relations of the convict may also influence or frustrate the recommendations of the committee on Prerogative of Mercy. The result is that the death sentence may be committed to any specific period or the convicted person may be pardoned. In the later case, the convicted person returns to the society 'reformed or hardened' depending on the circumstance and the victim or witnesses or parties to the trial live in fear for possible attack by the 'pardoned convict.'

In January 2000, former President Obasanjo of Nigeria granted federal amnesty to those who had been on death row for between 10 and 20 years to life imprisonment. In June 2009, the governor of Lagos State pardoned and released three death row inmates. In many states, governors do not sign execution warrants and commutation of death sentences is carried out predominantly enmass at the State level, usually on national holidays.⁷⁴ Adams Oshiomhole of Edo State in compliance with the presidential directive confirmed the execution of two (2) inmates in Edo State in 2013.

Another impediment to the execution of death sentence is that a convicted person may exercise his right of appeal against the conviction and sentence on him.⁷⁵ Where the conviction and sentence is quashed by an appellate court, the convict will be acquitted and discharged. More so, under the Nigerian Law,⁷⁶ a pregnant woman found guilty of capital offence will not be hanged or stoned to death until the baby is delivered and weaned. Similarly, a death sentence on a young person who has not attained the age of eighteen years will be commuted to life imprisonment or other terms in considerations of the principles of prevention, rehabilitation, deterrence, retribution or restitution.⁷⁷

⁷⁰ Sections 401 (1) and 402 (1) ACJ Act, 2015 and 221 Penal Code

⁷¹ *Kaku v. State* 11-12 SC 14 at P. 49; (1988) 13 NWLR (Pt. 583) 531.

⁷² See sections 408, 409, 410 – 413 (n68)

⁷³ Section 175(2) CFRN 1999 (as amended); see also *Okeke v. The State* (2003) 15 NWLR (Pt. 853) at 296.

⁷⁴ See generally Amnesty International, 'Death Sentences and Executions in 2009' P. 23 Act 50/001/2010. March 30, 2010; available at www.deathpenaltyworldwide.org accessed 3/3/2020.

⁷⁵ See Section 241 (1) (e), 232 (1) (d) and 33(1) CFRN 1999 (as amended).

⁷⁶ See section 404 and 405 ACJ, Act 2015; see also *Modupe Johnson v. The State* (1988) 4 NWLR (Pt. 87) 130.

⁷⁷ See further, principles of sentencing in B. Jamabo., *Current Trends in Sentencing and the administration of criminal Justice Laws*. Port Harcourt Rhamat Publishing, 2017.

4.14 Enforcement of Decisions on Fundamental Rights

Fundamental right means any of the rights provided in chapter IV of the Constitution and includes any of the rights stipulated in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.⁷⁸ Fundamental Rights also include human rights.⁷⁹

The constitution also provides that any person who alleges that any of the provisions of the fundamental rights have been or is likely to be contravened in any state may apply to a High Court in that state for redress. Accordingly, the High Court is empowered by the constitution to hear and determine, make order and issue writ for the purpose of enforcing the fundamental rights of the individual.⁸⁰ Ngwakwe, emphasized that:

‘Procedural problems of enforcing rights are legion and formidable. With inquisitorial approach, the elementary principle of presumption of innocence in trials is upturned. Even with adversarial approach, the cost and process of a party gathering his evidence could be prohibitive and eventually work against the poor and uninformed victims of rights violation. Besides there are problems of prohibitive cost of litigation, legal technicalities, delays, disobedience of court orders by the executive, issues of *locus standi*, corruption, interruption of democratic structures often by military coups. etc.’⁸¹

4.14.1 Enforcement of Fundamental Rights Order Against Certain Officers with Constitutional Immunity and Privileges

No civil or criminal proceedings shall be instituted or continued against the president, vice president, governor or deputy governor in the cause of performing their official duties.⁸² Also, diplomatic agents, ambassadors and heads of missions are entitled to the diplomatic privileges and immunity.⁸³ In most cases, the affected person or victim will be reluctant to approach the court for redress.

4.15 Death of Parties to the Action

Due to the challenges of justice delivery, cases overstay in our courts. As a result, the judgement creditor or both the judgement creditor and judgement debtor may die before the execution of the judgment. This peculiar circumstance requires the successors-in-title or legal representatives of the parties involved (if any) to commence a fresh proceeding or separate suit before a competent court to enforce the Court order or judgment. Undoubtedly, the fresh proceedings are associated with prohibitive litigation cost, delay in proceedings and delivery of judgement that a necessary party to the appeal is dead, the appeal shall be struck off the hearing list.⁸⁴ Although, the death of parties (for example the victim or the complainant) will not affect the execution of a death sentence, since it is the prerogative of the State to enforce death sentence in a criminal trial, the death of a sole proprietor of a business outfit will affect the enforcement of judgement against the proprietor since the business comes to an end with the

⁷⁸ Cap A 9 LFN, 2004.

⁷⁹ Order 1 Rule 2 Fundamental Rights (Enforcement Procedure) Rules 2009 C23 LFN, 2004.

⁸⁰ Section 46(1) (2) CFRN 1999 (as amended).

⁸¹ E. Ngwakwe., “Relevance of conceptional differences of Human Rights to Peace and Development” in M. O. Unegbo and I. Okoronye (ed). *Legal Developments in the New World Order*, Port Harcourt Jite Publishers, 2009.

⁸² Section 308 of CFRN as amended.

⁸³ Section 1 (2) Diplomatic immunities and privileges Act D9 LFN, 2004.

⁸⁴ Order 15 Rule 3 Court of Appeal Rules, 2016

death of the proprietor except where the personal representatives are available. It will be different in the case of a company with legal personality and perpetual succession

5.0 CONCLUSION AND RECOMMENDATIONS

A judgement creditor who has gone through the crucibles of litigation should reap the fruit of his judgment. It is pyrrhic victory where he is unable to realize the fruit of his judgement due to obstacles in the enforcement process. This paper therefore recommends as follows:

1. Appropriation Act or law should always include payment of judgement debts as a specific item. Most government agencies like Nigeria Police neglect to pay judgement debts on the ground that there was no provision or sufficient provision for payment of judgement debts under the Appropriate Act or law.⁸⁵ With the greatest respect, Section 25 of the Sheriffs and Civil Process Act and similar provisions in our statutes that bother on money or cost should be amended to meet the current realities of our global economy.
2. Legal practitioners should be dedicated and honest to clients' cause of action⁸⁶ pre-counseling should be sustained where the brief does not disclose reasonable cause of action or where it will be difficult to enforce a particular judgement if it succeeds, the solicitor should encourage his client during pre-counseling to embrace any of the Alternative Dispute Resolution mechanisms like negotiation and mediation which saves time and cost.
3. It is also recommended that parties should explore Alternative Dispute Resolution mechanisms after final judgement instead of embarking on fresh proceedings that are associated with death, high cost of execution and Procedural delays.
4. There should be total independence of the judiciary, financial autonomy and direct funding of the judiciary from the consolidated revenue fund as enshrined in the constitution. These will boost the administration of justice and enhance the delivery and enforcement of judgments without fear or favour from the 'pay masters' (the executive arm)
5. Judicial Officers should resort to use of Information Communication Technology (ICT) facilities so that judgement orders and records can be delivered to the parties within seven days as contemplated by the Constitution.⁸⁷ It is sad to note that judicial officers still write in long hands in poorly equipped court rooms and chambers. This circumstance, no doubt affects delivery and enforcement of judgments in Nigeria.
6. A supernumerary Police Unit should be established within the judiciary to assist the Sheriffs in the execution of Court Orders. This situation will reduce cost of execution of writs and provide the needed opportunity for judgement creditors to enforce their judgment.
7. The Attorney General of the Federation and the state should provide the enabling environment through the instrument of their office to ensure that government complies with court order.

⁸⁵ A review of certain provisions of the constitution that affects the endorsement of judgement is a desideratum

⁸⁶ Rules 14 and 15 of Professional Conduct for Legal Practitioners, Cap 111 LFN 2004.

⁸⁷ Section 36(7) CFRN 1999 (as amended).