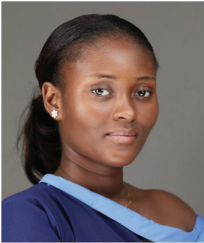


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Enforcement of Judgments - Financial Institutions and Garnishee Proceedings

forward.

Garnishee Proceedings

Section 83 Sheriffs And Civil Process Act (SCPA) provides that a Judgment Creditor may before or after orally examining a Judgment Debtor, file an ex-parte application³ seeking (a) sums owed to the Judgment Debtor by third parties be attached to satisfy the Judgment Debt, and (b) that the Garnishees be made to state why the debt they owe the Judgment Debtor should not be paid to the Judgment Creditor, in satisfaction of the Judgment Debt. Also, the Judgment Creditor or his legal counsel is required to depose to an affidavit, stating the unpaid Judgment Debt and the third parties indebted to the Judgment Debtor who are within the state.

It is important to note that for a Garnishee to be joined in any proceedings, the Garnishee must be indebted to the Judgment Debtor, and the amount to be paid by the Garnishee to the Judgment Creditor is the amount owed by the Garnishee to the Judgment Debtor. In the same vein, a Judgment Creditor has a responsibility, although not mandatory, to speak to the Judgment Debtor, to confirm its debtors, before joining such third-party debtors as Garnishees.

Judgment Creditors Habit of Joining Several Financial Institutions in Garnishee Proceedings

The practice today has shifted from joining only third parties who are indebted to Judgment Debtors in Garnishee Proceedings. Judgment Creditors now join several financial institutions in Garnishee Proceedings, without any confirmation or reasonable belief that the financial institutions have monies belonging to the Judgment Creditor. This approach may be attributed to the absence of a central database for the Judgment Creditor to identify the Judgment Debtor's banks or debtors, or the ability of the Judgment Creditor to request banking information of the Judgment Debtor from a financial institution, without a valid court order (in view of bank's duty of confidentiality to its customers). This makes the Judgment Debtor cast a wide net by joining as many financial institutions as possible, with the hope that something sticks.

This current practice comes at a cost borne by the financial institutions, the courts, and ultimately, the credibility of the judicial process itself. For financial institutions, this translates into legal and administrative costs. Courts in turn are forced to spend time and resources handling needless applications and resolving objections that could have been avoided altogether.

A New Ray of Hope?: Suntrust Bank (Nig) Ltd v Dada⁴

The Court of Appeal in a recent decision in Suntrust Bank (Nig) Ltd v Dada reiterated the age long provisions of Section 83(1) of the SCPA and

addressed the indiscriminate joining of banks in Garnishee Proceedings, without just cause.

The Court of Appeal held that Section 83(1) of the SCPA makes it a condition precedent that a Garnishee must in fact be indebted to the Judgment Debtor. The court condemned the "net casting" practice of indiscriminately listing all banks without first ascertaining whether the banks hold any funds belonging to the Judgment Debtor and highlighted the financial impact it has on the shareholders of the financial institutions that are forced to bear the cost of litigation. The appellate court stressed that Garnishee Proceedings should only be commenced against banks where there is reasonable evidence that the Judgment Debtor maintains funds with the bank, rather than using a speculative, blanket approach.

This judicial stance reinforces the argument that while Garnishee Proceedings remain vital, they must not be used as a blunt instrument against all banks simply out of convenience or speculation.

Charting the Path Forward

To restore the integrity of Garnishee Proceedings in the Nigerian judicial system, the courts and counsel are required to ensure strict compliance with Section 83 (1) of SCPA, failing which, an application should be dismissed with substantial costs. Courts are required to satisfy themselves that the Judgment Creditor has taken reasonable steps to confirm that the Garnishees are indeed, indebted to the Judgment Debtor and in the case of banks, that the Judgment Debtor maintains an account with the bank, and they are in credit

before granting an "Order Nisi"⁵ in a Garnishee Proceeding.

While we recognise the difficulty in confirming the indebtedness of a third-party to a Judgment Debtor, counsel is required to take proactive steps to ascertain relevant third-party debtors of the Judgment Debtor, before joining them as Garnishees to the Proceedings. This may include applying for the Judgment Debtor to disclose its debtors before instituting Garnishee Proceedings.

Courts on the other hand may award costs against the defaulting party, and upon request, compensate anybody or entity that was indiscriminately joined in a Garnishee Proceeding without just cause, once it is shown to that the Garnishee has no relationship with the Judgment Debtor, and has incurred legal and administrative costs defending the action.

In view of the apparent lacuna in the system that makes it difficult for Judgment Creditors to ascertain or confirm third-party debtors or banks the Judgment Debtor maintains an account with, there may be a need to amend the extant laws to allow successful litigants/Judgment Creditors request from relevant authorities, or bodies, information regarding a Judgment Debtor's financial status or even debtors and banks without jeopardizing or risking the dissipation of funds. This will reduce the indiscriminate joinder of financial institutions in Garnishee Proceedings.

Conclusion

Garnishee Proceedings remain a vital tool in the enforcement of monetary judgments. However, the increasing trend of joining every financial institution in the proceedings, regardless of their relationship with the Judgment Debtor undermines the efficiency and fairness of the process, and leaves the Garnishees to bear unnecessary cost, without compensation. Courts are also burdened with the process created for an effective enforcement system.

The way forward is not to curtail the rights of Judgment Creditors or make it difficult to enforce monetary judgments, but to restore discipline, and precision in the exercise of these rights. With stricter judicial scrutiny, smarter procedural tools, and collaborative legal and regulatory reforms, Garnishee Proceedings can once again serve their true purpose as an efficient and equitable enforcement procedure.

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¹ A Judgment Debtor is a party that is ordered to pay money to another person/party at the conclusion of the suit.
² A third party joined in a garnishee proceeding for being indebted to the Judgment Debtor.
³ An application filed without notice to the other party, where there is a real urgency.
⁴ (2025) LPELR-81395(CA)
⁵ An Order Nisi in garnishee proceedings is an order granted by a court, directing the Garnishees to disclose the amount owed to the Judgment Debtor, and state why the same should not be paid to the Judgment Creditor in satisfaction of the Judgment Debt.

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