

## Abusive Use of Contempt Proceedings for Enforcement of Money Judgments in Nigeria

### Introduction

Legal systems all over the world have institutionalized various enforcement mechanisms to enable successful litigants who have obtained judgments, including money judgments, to realise the fruits of their judgments. In Nigeria, the legal architecture for enforcement or execution of judgments obtained in civil cases consists, principally, of the Sheriffs and Civil process Act, Cap S6, Laws of the Federation of Nigeria, 2004 (“SCPA”), the Judgment Enforcement Rules (“JER”) and the Rules of various courts. These laws contain comprehensive provisions regarding the methods, procedures and principles that govern the enforcement of court judgments or orders.

Essentially, the prescribed methods by which court judgments could be enforced in Nigeria include: a) issuance of a writ of attachment of goods and chattel otherwise known as writ of fieri facias; b) judgment summons; c) writ of sequestration; d) garnishee proceedings; e) charging order; f) warrant for possession of premises (Form N); and g) contempt or committal proceedings. While these modes of enforcement are expected to achieve the same purpose i.e. enforcement of judgments or orders, they cannot be used at the whims and caprices of a judgment creditor. The

mode to be adopted for the enforcement of a judgment or order is largely dependent on the nature of the particular judgment or order sought to be enforced.

However, in spite of how clear the statutory provisions are on the methods/procedure for enforcement of orders made in civil proceedings, many legal practitioners have often resorted to deploying wrong methods in enforcing money judgments obtained on behalf of their clients. Specifically, owing to its coercive nature, there is now frequent resort to the use of contempt proceedings as a medium for enforcement of money judgments. This frightening practice is now being deployed deliberately by judgment creditors to arm-twist judgment debtors to pay judgment debts at all cost, even in the face of pending appeals against such judgments. After all, the end, they say, justifies the means!

This article examines the provisions of the enabling statutes vis-a-vis judicial pronouncements on contempt proceedings in Nigeria and the propriety or otherwise of the emerging practice of using contempt proceedings for the enforcement of money judgments in Nigeria. The article also discusses the prescribed methods/procedures for the enforcement of money judgments which the judgment creditors should strictly adhere to.

## Overview of contempt proceedings

Contempt or committal proceedings are usually instituted when there is contempt of court. The phrase "contempt of court" is fluid and its definition depends on the standpoint from which it is examined. The Black's Law Dictionary, 11<sup>th</sup> Edition,<sup>1</sup> defines "contempt" as *"a disregard of or disobedience to the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behaviour or insolent language in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."* Put generally, contempt of court may be described as that conduct which tends to bring into disrepute, scorn or disrespect the authority and administration of the law or such act which tends to interfere with and/or prejudice litigants and/or their witnesses in the course of litigation.

The concept of contempt proceeds on the philosophy that it is not in the interest of any society that is governed by the rule of law to allow the authority and dignity of its courts or legislature to be eroded by unbecoming acts or behaviour. Hence, the power to punish for contempt is inherent in all courts of record and may be independent of statutes. Such power is considered necessary for the proper administration of justice. It is not there to be used for the vindication of

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<sup>1</sup> At page 360.

the Judge as a person or for his personal aggrandizement. Such inherent powers to punish for contempt are created, maintained and retained for the purpose of preserving the honour and the dignity of the court. It follows therefore that a Judge exercising such powers must always realize that he holds same on behalf of the court for the advancement of justice and the good of the public. However, such powers to punish for contempt must be sparingly used if the dignity of the court itself is to be well protected. If the courts are to do justice, they need power to administer it without interference or affront and also to enforce their orders and to punish those who insult or obstruct them directly or indirectly in the performance of their duty or misbehave in such a manner as to weaken or lower the authority of a court of law.

### Types of contempt

Contempt of court is either criminal or civil. It is criminal when it consists of interference with administration of law, thus impeding and perverting the course of justice. It is civil when it consists of disobedience to the judgments, orders or other process of the court resulting in or involving private injury. However, contempt of court, whether civil or criminal, is *sui generis* and the standard of proof of the disobedience of the order of the court is not just on the balance of probabilities but beyond reasonable doubt because it is punished as a criminal offence.<sup>2</sup> It must however be noted that a clear distinction between civil and criminal contempt is often difficult to draw.<sup>3</sup>

Contempt of court could also be *in-facie curiae* or *ex-facie curiae*. Where it is contempt committed in the immediate view and presence of the court, such as insulting language or acts of violence or same near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings, it is *in-facie curiae*, and such is usually dealt with by the court summarily. On the other hand, where the insulting language or act of disobedience occurs outside the view of the court, it is *ex-facie curiae* and the proceedings may be begun by the presentation of criminal charges against the offender.

### Commencement of contempt proceedings

There are many ways of commencing contempt proceedings. However, the category of contempt being prosecuted determines the manner of commencement of the proceedings. In *Nwawoka v*

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<sup>2</sup> *Ezekiel-Hart v Ezekiel-Hart* (1990) 1 NWLR (Pt. 126) 276; (1990) 2 SCNJ Page 1 at 2.

<sup>3</sup> *Awosanya v Board of Customs* (1975) 1 All NLR Part 1 Page 106.

*Adilkamkwu*,<sup>4</sup> The Court of Appeal identified four ways of commencing contempt proceedings, viz:

- (a) Where the contempt consists solely of disobedience of an order of Court, the only acceptable procedure for commencing the proceeding is as provided in Section 72 of the SCPA and Order 9, Rule 13 of the JER, made pursuant to the Sheriffs and Civil Process Act, i.e. by issuance of Notice of Consequence of Disobedience to Order of Court (Form 48) and Notice to Show Cause Why Order of Attachment Should not be Made (Form 49).
- (b) Where the contempt consists of disobedience of a court process or obstruction of an official of Court in the carrying out of his lawful duties, it is commenced by the procedure provided for in the High Court Rules, e.g. Order 35 Rule 1(2) of the Federal High Court (Civil Procedure) Rules, 2019 which requires the filing of a motion on notice.
- (c) Where it is contempt committed in the immediate view and presence of the Court, such as insulting language or acts of violence or same near the presence of the Court as to obstruct or interrupt the due and orderly course of proceedings i.e. in facie curiae, it is dealt with by the court, summarily. The offending party will be asked to go into the dock and a charge would be prepared by the Court and the offence of the offending party would be specifically and distinctly stated to him and he would be asked to show cause from the dock why he should not be punished for contempt.
- (d) Where the insulting language or acts of violence occur outside the view of the Court, i.e. ex-facie curiae, the proceedings may be begun by the presentation of criminal charges against the offender by the office of the Attorney-General under the provisions of the Criminal or Penal Code.

## **Contempt proceedings and enforcement of money judgment**

This section brings us to the meat of this article. The law is quite clear as to the nature of judgments that can be enforced by contempt proceedings – that is, committal proceedings commenced by Forms 48 and 49. Section 72 of the SCPA is very instructive on this. The section provides as follows:

*“If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgement debtor guilty of the*

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<sup>4</sup>(2015) ALL FWLR (pt.804) 2064 held 6.

*misconduct defined in paragraph (f) of section 66 of this Act, may order that he be committed to prison and detained in custody until he has obeyed the order in all things that are performed and given such security as the court thinks fit to obey the other parts of the order, if any, at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs.”(Emphasis added)*

Without any strained construction, the phrase “*other than for payment of money*” used in section 72 of the SCPA evinces the legislative intent to exclude orders for the payment of money from those enforceable by contempt proceedings. To further illustrate the intention to exclude money orders from orders enforceable by contempt proceedings, Order IX Rule 13(1) of the JER provides that:

*“When an order enforceable by committal under section 72 of the Act has been made, the registrar shall, if the order was made in the absence of the judgment debtor and is for the delivery of goods without the option of paying their value or is in the nature of an injunction, at the time when the order is drawn up, and in any other case, on the application of the judgment creditor, issue a copy of the order endorsed with a notice in Form 48, and the copy so endorsed shall be served on the judgment debtor in like manner as a judgment summons.” Emphasis supplied*

The only logical interpretation of the phrase “*when an order enforceable by committal under section 72 of the Act has been made*” is that before contempt proceeding is deployed for the enforcement of any order, recourse has to be made to Section 72 of the SCPA to know if such order is enforceable by contempt proceeding. In other words, only orders other than for the payment of money, should elicit the use of contempt proceedings for their enforcement. By necessary implication, any order made for the payment of money is not within the purview of orders enforceable by contempt proceedings.

To re-emphasise the impropriety of using contempt proceedings to enforce money judgments is the phrase “*is for the delivery of goods without the option of paying their value or in the nature of an injunction*” in the JER. This phrase clearly removes even orders for delivery of goods with the option of paying their values from the purview of contempt proceedings. With this, it is plain that any order that has any semblance of payment of money, whether made solely or in the alternative, is completely unenforceable by contempt proceedings.

What is clear from the provisions of the JER quoted above is that the type of judgments or orders enforceable by contempt proceedings are orders for injunction, whether mandatory or prohibitory, interlocutory or permanent/perpetual orders, specific performance and delivery of

goods without an option of payment. Where, therefore, any person refuses or neglects to comply with an order made against him by a court of competent jurisdiction other than for payment of money, the court has ample jurisdiction pursuant to the provisions of section 72 of the said SCPA to order that he be committed to prison and detained in custody until he purges himself of the contempt. But where the order is for payment of money, other methods of enforcement become necessary.

The above position received judicial imprimatur in *Yekini A. Abbas & Ors. v Olatunji Solomon & Ors.*<sup>5</sup> where the Supreme Court held as follows:

*“There can be no doubt that it is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order or within the time as abridged or provided for under the rules of court or to disobey a judgment or order requiring a person to abstain from doing a specified act or to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction. Accordingly, a judgment or order to do, or abstain from any act, unless otherwise stipulated by the statute, may be enforced by a writ of attachment or by committal.*

*The commonest instances of such a judgment or order are orders for injunction, whether mandatory or prohibitory, interlocutory or permanent, specific performance and delivery of goods without an option. Where, therefore, any person refuses or neglects to comply with an order made against him by a court of competent jurisdiction other than for payment of money, the court has ample jurisdiction pursuant to the provisions of section 72 of the said Sheriffs and Civil Process Act to order that he be committed to prison and detained in custody until he has purged his contempt.”* (Emphasis supplied)”

In light of the foregoing, it is not proper for a court to entertain contempt proceedings where the order sought to be enforced is for payment of money. The jurisdiction of the court would not be properly invoked in that circumstance as the proceedings would not have been initiated by due process of law, which is one of the pre-conditions for the exercise of jurisdiction by courts in Nigeria.<sup>6</sup>

## Prescribed methods/procedures for the enforcement of money judgments

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<sup>5</sup> (2001) LPELR-23 (SC) Pp. 19 – 20, paras B – G.

<sup>6</sup> Incorporated Trustees of Nigerian Governors Forum & Anor. v Riok Nigeria Limited & Ors. (2018) LPELR – 44915(CA).

Having established that contempt proceedings cannot be used to enforce money judgments or orders, what then are the methods prescribed for the enforcement of money judgments or orders? The answer to this query was provided by the Supreme Court in *Okoya v. Santilli*<sup>7</sup> where the Court enumerated the various methods of enforcing the various orders of court as follows:

- “(i) *A judgment/order for payment of money may be enforced by a writ fieri facias, garnishee proceedings, a charging order, a writ of sequestration or an order of committal on a judgment debtor’s summons.*
  
- (ii) *A judgment for possession of land may be enforced by a writ of possession, a writ of sequestration or a committal order.*
  
- (iii) *A judgment for delivery of goods may be enforced by a writ of specific delivery or restitution or their value, a writ of sequestration or writ of committal.*
  
- (iv) *A judgment ordering or restraining the doing of an act may be enforced by an order of committal or a writ of sequestration against the property of the disobedient person.”*

From point (i) above, four methods can be identified as the statutorily prescribed methods for the enforcement of civil orders for the payment of money. The four methods mentioned in the decision, which are not exhaustive, include writ fieri facias, garnishee proceedings, a charging order, a writ of sequestration or an order of committal on a judgment debtor’s summons. Each of these methods, including others not mentioned, will be discussed in detail in the next paragraphs.

### [Writ of fieri facias \(fifa\)](#)

Writ of *fieri facias* popularly known as writ of fifa is one of the commonest methods of enforcing money judgments in Nigeria. The writ is usually issued to attach the moveable assets of the judgment debtor for sale to realise the judgment debt. However, not all moveable properties are attachable. For instance, the beddings of the judgment debtor and that of his family members, his apparel and tools and implements of trade, to the value of N10.00 (Ten Naira) are all not attachable.<sup>8</sup>

Upon attachment, the judgment debtor is served with a notice of his total indebtedness and when his attached properties would be auctioned which is usually five (5) days from the date of

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<sup>7</sup> (1990) LPELR – 2504(SC).

<sup>8</sup> Section 25 of the Sheriff and Civil Process Act.

attachment. If the judgment debtor does not pay the judgment debt before the expiration of the notice period, his properties are sold and the money realized from the sale is used to settle the judgment debt.

### [Writ of attachment of immoveable properties of the Judgment Debtor](#)

This is usually used as prescribed in Form 38 to attach the immoveable property or properties of a judgment debtor for sale to recover the judgment debt.<sup>9</sup> The judgment debtor is given notice of 14 days and his property is sold after the expiration of 15 days from the date of attachment by public auction. The sale becomes absolute after 21 days, if not challenged.

It should be noted however, that this method is usually deployed as the last resort. In other words, it can only be used when other recognized methods have been used and the judgment debt is still either wholly or significantly unsatisfied. Therefore, as a pre-condition for the issuance of the Writ here, the judgment creditor must show that he has sought to levy execution on other immoveable properties of the judgment debtor but could not find any or those found were not sufficient in value to satisfy the judgment debt.

### [Garnishee proceedings](#)

Garnishee proceedings entail recovering judgment debt from a third party who is indebted to the judgment debtor and who was not a party to the suit in which the judgment was given. Upon an *ex parte* application of the judgment creditor, the court makes an order *nisi* for the freezing of funds standing to the credit of the judgment debtor in the hands of a third party.<sup>10</sup> The third party technically known as *the garnishee* is required by the order to either pay the funds in his custody or appear in court to show cause why the order should not be made absolute for the payment of the frozen funds in his custody to the judgment creditor. Where no payment is made and the garnishee does not appear in Court or appears but fails to show cause, the order is made absolute against him for the payment of the funds in his custody in satisfaction of the judgment debt. Where a good cause is shown, the order nisi is discharged by the Court.

### [Charging order](#)

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<sup>9</sup> Section 44 – 46 of the Sheriff and Civil Process Act.

<sup>10</sup> Section 83 of the Sheriff and Civil Process Act.



A charging order is a court order which imposes a charge on the freehold or leasehold property of a judgment debtor in order to secure payment of a debt. The charge is registered with the Land Registry. If the court grants a charging order the unsecured debt becomes secured.

### *An order for committal on Judgment Debtor's Summons/Writ of Sequestration*

In addition to methods discussed above, a money judgment can also be enforced by an order of committal upon a judgment debtor's summons.<sup>11</sup> The judgment debtor's summons is issued by the court to compel a judgment debtor to appear in court and provide information about his assets and how they can be disposed of to pay the judgment debt. Where the judgment debtor fails to appear, he may be arrested and brought to court for examination. Where the court finds that the judgment debtor has assets that can satisfy the judgment debt, the court may make an order directing him to take necessary steps to pay the judgment debt. Where he fails to act on the order of Court, he may be committed to prison until he complies or an order may be made for the issuance of a Writ of Sequestration attaching his assets for disposal and settlement of the judgment debt.<sup>12</sup>

While the judgment debtor's summons method may ultimately involve the restriction of the liberty of the judgment debtor, like contempt proceedings earlier discussed, it differs in some respects from contempt proceedings. Notably, unlike the contempt proceedings whose primary aim is to punish for disobedience or disrespect of court or its orders, the primary purpose of judgment debtor's summons proceedings is to confirm the capability of the judgment debtor to liquidate the judgment debt or identify the assets of the judgment debtor to fashion out ways of recovering the judgment debt from his identified assets. However, in the process, orders are made which, if disobeyed by the judgment debtor, would amount to contempt of court and may lead to his committal. In the absence of such contemptuous acts by the judgment debtor during the process, the proceeding moves on without the need for arrest or committal.

### Conclusion

The legal framework for the enforcement of judgments in Nigeria leaves no one in doubt as to the nature of judgments suitable for enforcement by contempt proceedings. As can be seen from the statutory provisions and judicial pronouncements discussed above, only judgments which are not for payment of money can be enforced by contempt proceedings. Therefore, the growing

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<sup>11</sup> Section 65(1) and (2) of the Sheriff and Civil Process Act.

<sup>12</sup> Section 82 of the Sheriff and Civil Process Act.

trend of using contempt proceedings to enforce money judgments is not only an unwholesome practice which legal practitioners must desist from, but also amounts to abusive use of the legal system to oppress ignorant money judgment debtors.

**Note:** This article does not constitute a legal advice. For proper legal advice or inquiries on the issues raised in this article or general enquiries relating to enforcement of judgments in Nigeria, please contact Aret & Bret LLP at [ab@aret-bret.com](mailto:ab@aret-bret.com). You can also reach out to the authors:



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