EVALUATING SOME KNOTTY ISSUES RELATING TO THE LAW AND PRACTICE OF GARNISHEE PROCEEDING

by

Agent Benjamin Ihua-Maduenyi, Esq*

ABSTRACT

Garnishee proceedings is a special kind of proceedings that is sui generis. It is a potent, effective and expeditious mode of enforcement of court judgments especially debt recovery. Because of its preference over other modes of judgment enforcement and execution, it soon exacerbated some thorny legal issues which have bedeviled its use and application and have foisted on the courts, especially the Court of Appeal, the unenviably lot of giving out conflicting and contradictory decisions on some of the said knotty issues. Pending when the Supreme Court will be opportuned to pronounce on some of these thorny issues and determine them for good, this paper sets out to confront head-on, some of these knotty issues with a view to charting the better way to go in terms of tackling some of these issues. This paper will therefore subject these issues to painstaking evaluation and analysis which will certainly light up the pathway in order to make it easy for the apex court to eventually resolve these issues when the time comes.

1. INTRODUCTION

Garnishee proceedings is one of the most potent and expedited means of recovering judgment debt and costs in Nigeria. As described by a learned legal writer:

> *Garnishee proceedings is a process of enforcing money judgments by the seizure or attachment of the funds of the judgment debtor, which funds is in the hands or custody of a third party otherwise known as the "garnishee". By this process, a court of law is competent to order a third party in whose hands or custody the funds of the judgment debtor is, to pay over to the judgment creditor, the debt due or accruing due from him to the judgment debtor or as much of it as may be sufficient to satisfy the judgment debt and the costs of the garnishee proceeding.*[1].

Starting with an order *nisi* which is usually granted *exparte*, the court then sets the matter for hearing and on the fixed date, subject to the garnishee effectively showing cause why the order nisi should not he made absolute, the court simply proceeds to make the order nisi absolute and this brings the entire proceedings to an end. Thus, it is this expeditious nature which has endeared garnishee proceedings to many litigants and legal practitioners.[2]

* **Agent Benjamin Ihua-Maduenyi is a Barrister and Solicitor of the Supreme Court of Nigeria, a Chevening scholar and Lecturer, Faculty of Law, University of Port Harcourt, Nigeria. Email: agent.ihua-maduenyi@uniport.edu.ng**

[1] Ekemini Udim, *Principles of Garnishee proceedings in Nigeria* (Lagos: Princeton & Associates Publishing Co,
2105) v.

[2] See the Supreme Court's decision in *Union Bank of Nigeria Plc v Boney Marcus Industries Ltd* (2005) 13 NWLR (Pt. 943)
654 at 666.

Because garnishee proceedings are generally fast and less cumbersome in realizing the judgment debt and costs, it is currently one of the most patronised modes of enforcement of judgments. Most litigants and practitioners now see the other traditional modes as obsolete and simply settle for garnishee proceedings at the least opportunity. The upshot of this is that cases on garnishee proceedings have tremendously proliferated.

It is worthy of note that garnishee proceedings are proceedings sui generis (that is, proceedings of their own special kind). They are also unique because they constitute an exception to the contractual rule of privity which precludes a non-party to a given bargain to enforce benefit from same. Provided the funds in the hands or coffers of the garnishee are shown to belong to the judgment debtor, a garnishee order will compel it to be handed over to the judgment creditor who is also known as the *garnishor*, provided there is no legal encumbrance on such funds.[3]

Ordinarily, garnishee proceedings are governed and regulated by the Sheriffs and Civil Process Act[4] and the Judgments (Enforcement) Rules made pursuant to the Sheriffs and Civil Process Act[5]. The civil procedure Rules of the Federal High Court also makes lavish provisions for garnishee proceedings which are largely adapted from both the Sheriffs and Civil Process Act and the Judgments (Enforcement) Rules. But because of the pervasive use of garnishee proceedings, some State Governments have felt obliged to incorporate provisions on garnishee proceedings into their Rules of Courts. Two States, namely, Kogi and Kwara States are handy examples in this regard.[6] Although the provisions of their Rules on garnishee proceedings are substantially similar to what is contained in the aforesaid Federal enactments, it is our respectful view that because the Federal legislations have unpretentiously covered the field on the subject of garnishee proceedings, the provisions of the Kogi and Kwara States High Court (Civil Procedure) Rules on garnishee proceedings are mere surplusage without any outstanding judicial impact. Furthermore, garnishee proceedings could be commenced even at a Magistrate's Court.[7]

Just as honey naturally attracts bees, the pervasive use of garnishee proceedings in Nigeria soon spawned upon itself or gave rise to the emergence of some teething issues which started to affect garnishee proceedings and virtually bedeviled its use and application and have foisted on the courts, especially the Court of Appeal, the unenviable lot of giving out *conflicting* and contradictory decisions on some of the said knotty issues. For instance, the Court of Appeal has hoisted conflicting

[3] Mark Hapgood, QC*, Paget's Law of Banking* (London: Lexis Nexis Butterworths, 2007) 13th edition, 631.
[4] Cap. S6, Laws of the Federation of Nigeria, 2004, Vol. 14.
[5] *Ibid.*
[6] *Ekemini Udim*, *(n. 1).*
[7] See *Central Bank of Nigeria v Auto Import Export* (2013) 2 NWLR (Pt. 1337) 80*; U.B.N. Plc v Boney Macus Industries Ltd* (2001) 13 NWLR (Pt. 731) 567 at 594 paras A-E.

decisions on whether the judgment debtor is a party to a garnishee proceedings who deserve to be heard by the Court. Thus, in *United Bank for Africa Plc v Hon. Iboro Ekanem*[8], the Court of Appeal held that a judgment debtor is not a party to a garnishee proceedings and ought not be heard before the Court decides to make its garnishee order *nisi* absolute. But in *Cross River State Forestry Commission v Muri Effiong Anwan*[9], the same Court of Appeal however somersaulted and held that because the Sheriffs and Civil Process Act provides for a judgment debtor to be served with the garnishee order *nisi* within a period of fourteen days, the court is obliged to consider every process filed by him and this makes him a party to a garnishee proceedings.

Another thorny issue in this regard is whether garnishee proceedings, being a special type of proceedings is subject to an application for stay of execution. Whereas the Court of Appeal in the case of *Purification Techniques Ltd v Attorney-General of Lagos State*[10] held that garnishee proceedings are special proceedings which are competent notwithstanding the pendency of a motion for stay of execution, the same Court of Appeal in the cases of *S.T.B. Ltd v Contract Resources Ltd*[11] and *F.I.B. Plc v. Effiong*[12] held that a pending motion of stay of execution should first be determined before proceeding with the `garnishee proceedings.

Another knotty issue with regards to garnishee proceedings is whether the consent of the Attorney-General must first be sought and obtained where the money sought to be garnished is under the custody or control of a public officer. Thus, in *Purification Techniques Ltd v Attorney-General of Lagos State*[13] the Court of Appeal held that funds of a public officer or public office or establishment in a commercial bank cannot be said to be in the custody or control of the public officer and therefore does not require the prior consent of the Attorney-General before the commencement of garnishee proceedings against it. The same court however took a different position in the cases of *Christopher Onyewu v Kogi State Ministry of Commerce & Industries* [14] and *Government of Akwa Ibom State v Powercom Nig. Ltd*[15] where it held that pursuant to Section 84(1) of the Sheriffs and Civil Process Act, no garnishee proceedings could be commenced against the monies of a public officer, public office or establishment with a commercial bank without the prior consent of the Attorney-General.

The above series of conflicting and contradictory decisions of the Court of Appeal have occasioned confusion concerning those aspects of garnishee practice and

[8] (2010) 6 NWLR (Pt. 1190) 207 at 227, paras B-D, ratio 12.
[9] (2012) 40 WRN 175.
[10] (2004) All FWLR (Pt. 211) 1479.
[11] (2001) 6 NWLR (Pt. 708) 115 at 126 paras, B-C.
[12] (2010) 16 NWLR (Pt. 1218) 199 at 207-208 paras H-A.
[13] (Supra).
[14] (2003) 10 NWLR (Pt. 827) 40.
[15] (2005) All FWLR (Pt. 246) 1353.

have virtually created an atmosphere of uncertainty. Knowing that the Supreme Court will only intervene and set the records straight when the opportunity arises, this paper seeks to illuminate these slippery paths to guide practitioners and litigants in navigating through them. What is more, this paper seeks to provoke more discussions on these thorny aspects of garnishee proceedings to provide the apex court with enough background information to work with when the much awaited opportunity finally comes.

This paper is divided into six parts. The first part which is the instant one is the introduction. The second part examines the meaning and nature of garnishee proceedings. The third part probes into parties to a typical garnishee proceedings, whether a judgment debtor is inclusive thereto. The fourth part examines the effect of a subsisting application for stay of execution on a garnishee proceedings, while the fifth part will discuss the issue of pre-trial consent by the Attorney-General in garnishee proceedings. The paper advisedly takes the liberty of winding-up with a conclusion in the sixth part.

2. THE MEANING AND NATURE OF GARNISHEE PROCEEDINGS

A necessary starting point in ascertaining the meaning of garnishee proceedings is to have recourse to the definition of Lord Denning, M.R. in *Choice Investments Ltd v Jeromin imon*[16] where he stated as follows:

> *The word 'garnishee' is derived from the Norman French. It denotes one who is required to 'garnish', that is, to furnish a creditor with the money to pay off a debt. A simple instance will suffice. A creditor is owed £100 by a debtor. The debtor does not pay. The creditor then gets judgment against him for the £100. Still the debtor does not pay. The creditor then discovers that the debtor is a customer of a bank and has £150 at his bank. The creditor can a 'garnishee' order against the bank by which the bank is required to pay into court or direct to the customer – out of its customer's £150 – the £100 which he owes to the creditor.*

On his part, Lord Atkins defined it *inter-alia*:

> *Garnishee proceedings or attachment of debts is a method auxiliary to that of execution for the enforcement of a judgment or order for the payment of money which is not for payment of money into court enabling the judgment creditor to attach money due to the judgment debtor from a third person called the garnishee, who must be within jurisdiction*[17].

The Supreme Court of Nigeria per Akintan, JSC, has defined garnishee proceedings as follows:

> *Garnishee proceedings are a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor which forms part of his property available in execution. It is therefore a specie of execution of debt for which the ordinary methods of execution are inapplicable. By this process, the court has power to order a third party to pay direct to the judgment creditor the debt due or accruing due from him to the judgment debtor, as much of it as may be sufficient to satisfy the amount of the judgment and the*

[16] (1981) Q.B. 149 at 154-155.
[17] Atkins's Court Forms, Vol. 19, 2nd Edition, p. 47 paragraph 21.

> *cost of the garnishee proceedings. See Words and Phrases Legally defined, 3rd Edition, Vol. 2, pages 313-314*[18].

From the American jurisdiction, garnishee proceedings has been defined thus:

> *Garnishment is an inquisitorial proceedings, affording a harsh and extraordinary remedy. It is an anomaly, a statutory invention sui generis… with no affinity to any action known to the common law… it is a method of seizure, but it is a 'levy' in the usual acceptation of that term. It is a proceeding by which a diligent creditor may legally obtain preference over other creditors, and it is in the nature of a creditor's bill, or a sequestration of the effects of a debt in the hands of his debtor.*[19]

Putting together all the above, it could safely be asserted that garnishee proceedings is a means of collecting a monetary judgment against a judgment debtor by ordering a third party to pay money otherwise owed to the judgment debtor, directly to the judgment creditor. While the aforesaid third party is called the garnishee, the judgment creditor is called the *garnishor*. Garnishee can also be defined as a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor which forms part of his property available in execution. It is in the hands of a third party whereby a court order is required to direct the third party to pay directly to the judgment creditor.[20]

Note that for a garnishee proceeding to be valid, the following conditions must be satisfied. First, it must be shown that the third party with custody of the funds of the judgment debtor who is otherwise known as the garnishee is within the State in which the application is brought[21]. In other words, if a judgment creditor files a garnishee proceeding at the Rivers State High Court, while the garnishee resides or ordinarily carries on business in Lagos, such a proceeding is incompetent and ought to be struck out[22]. Secondly, the proceedings should be filed in any court in which the judgment debtor could, under the High Court (Civil Procedure) Rules or under the appropriate section or rule governing civil procedure in Magistrates Courts, as the case may be, sue the garnishee in respect of the debt. Thus, the court may not necessarily have to be the one that gave the judgment. It could even be a Magistrate's Court and the fact that the judgment debt exceeds the jurisdiction thereof does not stand as a barrier[23]. It should be noted that the provisions of Section 251(1) of the 1999 Constitution as amended are very germane and apposite to this second condition such that where the garnishee involved is an agency of the Federal Government, it is only before the Federal High Court that such a proceeding could be commenced[24]. Thirdly, the application

[18] *Union Bank of Nigeria Plc v Boney Macus Industries Ltd* (2005) 13 NWLR (Pt. 943) 654 at 666, paras. E-G.
[19] (2003) 38 C.J.S. Garnishment & 3, pp. 248-250 which was cited with approval in C.B.N. v Auto Import Export (2013) 2 NWLR (Pt. 1337) 80 at 126 paras C-D. See also Federal Civil Procedure (2003) 601; Garnishment, 64, 118.
[20] See *Fidelity Bank Plc v Okwuowulu* (2013) 6 NWLR (Pt. 1349) 197 at 200 ratio 2. See also
[21] *C.B.N. v Auto Import Export* (2013) 2 NWLR (Pt. 1337) 80 at 88-89 ratio 7.
[22] *Ibid.*
[23] *Ibid.*
[24] *KLM Royal Dutch Airlines v Taher* (2014) 2 NWLR (Pt. 1393)137.

for the garnishee order must be made *ex parte*. If the Court is satisfied that the judgment creditor is entitled to attach the debt, it can make a garnishee order *nisi*[25]. Fourthly, the service of the order nisi thereon binds or attaches the debt in the hands of the garnishee[26]. The fifth condition is that the garnishee order nisi must also be served on the judgment debtor within a period of fourteen days from the making of the order[27].

Note that it is not every debt that is attachable by the process of garnishee proceedings. Thus, for a debt to be attachable, it must be due or accruable to the judgment debtor. In other words, the judgment debtor must have a vested immediate legal right over same[28]. Again, it should be stated that upon receipt of the order nisi, the garnishee is precluded from paying out the attached debt to any other person except as ultimately directed by the court. It has been held that the garnishee will be liable for contempt if he disobeys the order nisi[29]. The garnishee is entitled to eight days within which to show cause why the order nisi should not be made absolute. The relevance of this stipulation is to afford the garnishee the opportunity to secure and protect any interest it may have over the said funds of the judgment debtor in its custody such as right of lien or set-off[30]. Where this is successfully done, the court will discharge the garnishee and vacate the order nisi, but where the garnishee otherwise fails to show the needed cause, the court is at liberty to make the order nisi absolute, which in effect makes mandatory for the garnishee to pay out the attached debt either to the court or the *garnishor*[31]. The order absolute is a final order which is enforceable against the garnishee by way of *fi fa* if it neglects to pay out the said debt as ordered[32].

It is instructive to note that in Rivers State, the Chief Judge by a practice direction made in 2013[33] imposed some novel requirements to be satisfied by a garnishor before a garnishee order nisi would be issued in his favour. According to paragraph 8(h)(i) & (ii) thereof, the *garnishor* must show that the judgment debtor has sufficient funds in the custody of the garnishee and he must attach a certificate of verification to show compliance with the above condition otherwise his application will be struck out. It is doubtful if the Chief Judge of Rivers State is competent to make the above practice direction on a subject which the National Assembly has poignantly and unpretentiously covered the field with the promulgation of both the Sheriffs and Civil Process Act and the Judgments Enforcement Rules.

[25] See *C.B.N. v. Auto Import Export* (supra).
[26] *Ibid.*
[27] *Ibid.*
[28] See Section 85 of the Sheriffs and Civil Process Act, Cap. S56, Laws of the Federation of Nigeria 2004. See also *Osibamowo v Shadeko* (1967) LLR 7.
[29] *U.B.A. v Ekanem* (2010) 2 NWLR (Pt. 1177) 181 at 196.
[30] See Obafemi *Awolowo University v Olanihun* (1996) 8 NWLR (Pt. 464) 123.
[31] *Diamond Bank Ltd v Ndubuisi* (2002) FWLR (Pt. 105) 727.
[32] *U.B.A. v Ekanem* (supra).
[33] Chief Judge of Rivers State Practice Directions No. 2, 2013.

3. PROPER PARTIES IN GARNISHEE PROCEEDINGS

This is obviously one of the issues plaguing garnishee proceedings in Nigeria. The reason why the issue of proper parties is of invaluable importance are not far to seek. First, it is material to the jurisdiction of the court over a matter as an improperly constituted action or proceedings is incompetent and liable to be struck out.[34] Secondly, it determines the extent of rights to be enjoyed in the proceedings as the rights of parties are clearly different from those of mere meddlesome interlopers. Thirdly, this issue determines how the constitutional right of appeal will be exercised at the end of the day, as parties are ordinarily entitled to appeal as of right, while non-parties can only appeal with leave as parties interested.[35]

The avalanche of legal opinion in Nigeria on the issue of proper parties to a garnishee proceedings is divided into two, with one thought school arguing that the parties involved are only the garnishor/judgment creditor and the garnishee[36], while the other school contends that the parties are three in number, namely, the judgment creditor, judgment debtor and the garnishee[37]. The Court of Appeal soon found both schools attractive and started applying them in successive cases. Thus, in *United Bank for Africa Plc v Hon. Iboro Ekanem,*[38] the Court of Appeal held that a judgment debtor is not a party to a garnishee proceedings and ought not to be heard before the Court decides to make its garnishee order *nisi* absolute. Also, in *N.A.O.C. v Ogini,*[39] the Court of Appeal again held that the judgment debtor is not a party to a garnishee proceedings and cannot exercise any right of appeal against it as a party. Similarly, in *NIMASA v Odey,*[40] a similar verdict was reached with the emphasis that the judgment debtor can only appeal against a garnishee order absolute with leave as a party interested.[41] The reason for the position maintained by this school of though was adumbrated in *United Bank for Africa Plc v Hon. Iboro Ekanem*[42] thus:

> *A careful reading of the provisions of Sections 83(1) and (2), 85, 86, 87, 88 and 90 of the Sheriffs and Civil Process Act, clearly reveal that the judgment debtor has more or less no role to play in garnishee proceedings. A judgment debtor is merely a nominal party whose money in the custody of the garnishee is being recovered by the judgment creditor in satisfaction of the judgment debt owing to the judgment creditor. The judgment debtor is not the one requested to appear*

[34] *Faleke v INEC* (2016) 18 NWLR (Pt. 1543) 61 at 87 ratio 33.
[35] See Sections 241 and 243 of the 1999 Constitution as amended.
[36] D.I. Efevwerhan, *Principles of Civil Procedure in Nigeria* (Enugu: Snaap Press Nigeria Ltd, 2013) 2nd Edition, pp.385-386.
[37] Fidelis Nwadialo, *Civil Procedure in Nigeria* (Lagos: University of Lagos Press,, 2000) .2nd .Edition, p. 1011.
[38] (Supra).
[39] (2011)2 NWLR (Pt. 1230) 131.
[40] (2012) 52 WRN 108 at 124-125.
[41] See further, *Nigerian Telecommunications Plc v I.C.I.C. (Directory Publishers) Ltd* (2009) 16 NWLR (Pt. 1167) 356 at 387; *Purification Techniques Ltd. V Attorney-General, Lagos State* (2004) All FWLR (Pt. 211) 1479; *Pipeline & Product Marketing Company Ltd v Delphi Petroleum* (2005) 8 NWLR (Pt. 928) 458 at 484, paras D-E.
[42] (Supra).

> *before the court to show because why the order nisi should not be made absolute. It is only the garnishee in this case the Guaranty Trust Bank Plc which is expected to inform the court if there is any third party's interest in the judgment debtor's money in its custody. It is only the garnishee that is expected to react if he dissatisfied with the order nisi to apply to the court by stating reasons why the order nisi should not be made absolute, but certainly, not the judgment debtor.*

On the other hand, the same Court of Appeal in a plethora of cases has held and insisted that in garnishee proceedings, the judgment debtor is also a competent party who deserves to be heard. Thus, in *Cross River State Forestry Commission v Muri Effiong Anwan*[43], the Court of Appeal held that because the Sheriffs and Civil Process Act provides for a judgment debtor to be served with the garnishee order *nisi* within a period of fourteen days, the court is obliged to consider every process filed by him and this makes him a party to a garnishee proceedings. Also, in *C.B.N. v Auto Import Export*[44], it was held by the Court per Saulawa, JCA as follows:

> *In garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor, on the other hand, is referred to as the Garnishor. Undoubtedly, both the Garnishor and the garnishee as well as the judgment debtor constitute the parties to the proceedings.*[45]

In fact, in *Nigerian Breweries Plc v Dumuje*[46], which was delivered on the 15th of July, 2015, the Court of Appeal went further to describe all the judgments which excluded the judgment debtor as a principal party to the garnishee proceedings as decisions given *per incuriam.*[47]

It is our humble view that of the aforesaid two schools of thought, the position of the first school is the one rooted on a strong wicket and is preferable to the latter one. In other words, we are fully in support of the position that in a typical garnishee proceedings, the proper or principal parties to it are only the judgment creditor otherwise called the garnishor and the person or body with the custody of the funds of the judgment debtor otherwise called the garnishee. The judgment debtor, *stricto sensu*, is not a party to a garnishee proceedings and can fully become one if he formally applies and secures the leave of court to be joined as a party thereto[48]. The reasons for our position are not far to seek. First, garnishee proceedings is an entirely new action which is different and distinct from the one between the judgment creditor and judgment debtor which gave rise to the judgment debt being sought to be attached.[49] In other words, the parties in this new garnishee action are different from the ones in the original matter that gave rise to the judgment debt. Secondly, garnishee proceedings are special and sui

[43] (2012) 40 WRN 175.
[44] (2013) 2 NWLR (Pt. 1337) 80 at 129 para G.
[45] See also *Nigerian Breweries Plc v Dumuje* (2016) 8 NWLR (Pt. 1515) 536 at 555-558 ratios 15-16*; Fidelity Bank Plc v Okwuowulu* (2013) 6 NWLR (Pt. 1349) 197.
[46] (Supra).
[47] See particularly pp. 616-617 paras, D-A, per Ogunwumiju, JCA.
[48] Pursuant to the applicable Rules of the Court in question on joinder of parties.
[49] See *Union Bank of Nigeria Plc v Boney Marcus Industries Ltd* (2005) 13 NWLR (Pt. 943) 654.

generis and simply requires the garnishee who is a bailee to the funds of the judgment debtor to show cause why the court should not direct that the said funds be paid out to the judgment creditor[50]. The judgment debtor is a complete stranger to this special proceedings. Thirdly, the laws regulating garnishee proceedings do not assign any role to the judgment debtor in a garnishee proceedings. Specifically, there is no provision in sections 82-92 of the Sheriffs and Civil Process Act or even in the Judgment (Enforcement) Rules and the regular civil procedure rules which stipulate anything to be done by the judgment debtor during the pendency of a garnishee proceedings. The only provision mentioning his name is section 83(2) of the Sheriffs and Civil Process Act which enjoins that aside from serving the garnishee, a copy of the garnishee order nisi must be served on the judgment debtor at least fourteen days before the day of hearing. This provision is quite understandable as it is intended to notify the judgment debtor of the fate of his funds in the custody of the garnishee[51]. The judgment debtor is not to show any cause in the matter, neither is he required to file any process. What is more, the judgment debtor has no automatic right of appeal against any decision reached in a garnishee proceedings unless he first obtains leave to appeal as an interested party.[52]

It is gratifying that our above position was recently confirmed by the Supreme Court in *Zenith Bank Plc v John*[53] where Onnoghen, JSC observed as follows:

> *Another aspect of the headache occasioned by the application is the fact that the Garnishee Order Absolute was made by the High Court against the Central Bank of Nigeria over the deposits of the applicant with that bank by virtue of which the said deposit has been attached/executed to the extent of the judgment debt. The applicant is therefore not a necessary party to the garnishee proceedings. The Central Bank of Nigeria, a necessary party to the garnishee proceedings appealed against the order absolute which appeal was struck out leaving nothing to be protected.*[54]

It has been argued repeatedly that courts in practice will not shut their eyes to processes filed by the judgment debtor in garnishee proceedings, even though he is not a principal party thereto[55]. While we agree that the right to fair hearing should at all times be respected, it is however contended, with humility, that the time has however come for the courts to guard garnishee proceedings jealously so that a judgment debtor does not frustrate a judgment creditor from reaping the fruits of his judgment. In other words, where a judgment debtor unilaterally files processes in a garnishee proceedings with the aim of stultifying such proceedings, it should not take the trial court any time to declare such processes as incompetent being filed by a meddlesome interloper who is simply meddling. It is our humble

[50] See Section 83(1) of the Sheriffs and Civil Process Act.
[51] See *Wema Bank Plc v Brastem-Sterr (Nig) Ltd* (2011) 6 NWLR (Pt. 1242) 58 at 76.
[52] See *Nigerian Agip Oil Co. Ltd. V Peter Ogini* (2011) 2 NWLR (Pt. 1230) 131.
[53] (2015) 7 NWLR (Pt. 1458) 393 at 399 ratio 2.
[54] Page 426, paragraphs B-C.
[55] *Ekemini Udim*, (n. 1), p. 18. See also the opinion of Ndukwe-Anyanwu, JCA, in Cross *Rivers State Forestry Commission v Muri Effiong Anwan* (2012) 40 WRN 175.

view that the judgment debtor cannot be heard to complain of denial of fair hearing in the circumstance, as his meddling processes rightly amount to obstruction of the course of justice in the matter[56].

Finally, it is submitted that by refusing to follow the decision of the Supreme Court in *Zenith Bank Plc v John*[57], the judgment of the Court of Appeal in *Nigerian Breweries Plc v Dumuje*[58] was given *per incuriam* and no longer represents the law in Nigeria.

4. EFFECT OF AN APPLICATION FOR STAY OF EXECUTION ON A GARNISHEE PROCEEDINGS

In *Integration (Nig) Ltd v Zumafon (Nig) Ltd*[59], the Supreme Court defined stay of execution to mean the '*postponement, halting or suspension of judgment of a court*'. Ordinarily when a party is dissatisfied with the judgment in a matter and he appeals against it, such an appeal alone does not operate as a stay of execution. But where he accompanies his notice of appeal with an application for stay of execution either before the trial court or the appellate court, the processes, by operation of law, stay the execution of the judgment or decision that is connected with it until it is finally determined or disposed of. The Supreme Court explained this rule in the celebrated case of *Vaswani Trading Co. v Savalakh Co*[60] per Coker, J.S.C. at page 2183 thus:-

> *Thus, although section 24 of the Supreme Court Act states that an appeal shall not operate as a stay of execution, it does not interfere with proceedings or an application for a stay of execution and by the same token any action or conduct of one or the other of the parties to the action taken whilst an application for a stay of execution is pending in this court, for the obvious or subtle purpose of stultifying the exercise by this court of its jurisdiction and indeed its duty to consider the application on its merits, must not be countenanced by this court… While by virtue of the provisions of this section, an appeal or the filing thereof could not eo ipso operate as a stay of execution, clearly in practice, the position should be different where apart from filing an appeal, the prospective appellant also files an application in this court by which a stay of execution of the same judgment is sought. In such circumstances, a general appraisal of the whole situation is absolutely necessary and it is most desirable that the court should ensure that, at the stage of the proceedings, it is not possible for any party to present it with a fait accompli.*[61]

The above position of the law was confirmed and applied in the recent case of *New Nigerian Bank Plc v Denclag Ltd & Ors*[62] where it was stated that it is now firmly settled that where an appeal is pending and a motion for stay of execution is filed, it is an abuse of process for the successful party to ignore the pendency of that motion and proceed to execute the judgment when the motion for stay of

[56] See *F.G.N. v Interstella Comms. Ltd* (2015) 9 NWLR (Pt. 1463) 1 at 6; *NITEL v I.C.I.C. (Directory Publishers) Ltd* (2009) 16 NWLR (Pt. 1167) 356.
[57] Supra).
[58] (Supra).
[59] (2014) 4 NWLR (Pt. 1398) 479 at 494 para. D.
[60] 1972 (12) SC 77
[61] *Ibid.*
[62] (2005) 4 NWLR (Pt. 916) 549; (2004) 5 F.R. 146 at 175-176.

execution is yet to be determined. Even in *Olori Motors & Co. v Union Bank Of Nigeria Plc*[63] the Supreme Court restated this principle of law and only exempted it in cases where the motion for stay of execution is not brought to the attention of the successful party before he proceeds to execute the judgment.

When however a similar application for stay of execution was filed in an appeal emanating from a garnishee proceedings in *Purification Techniques Ltd v Attorney General of Lagos State*,[64] the Court of Appeal held that garnishee proceedings are special proceedings which are competent notwithstanding the pendency of a motion for stay of execution. The reason given by the court was that enforcement of judgments by means of garnishee are completely different from execution of judgment by writ of execution and other similar means. As was summarized by the Court of Appeal:

> *Execution of judgment entails the seizure and sale of chattels of the judgment debtor under warrant of court. This is different from the attachment of debt owed to a judgment debtor by a third party who is indebted to the judgment debtor… There is a clear distinction between execution of judgments and other methods of enforcing judgments, such as garnishee proceedings. The distinction is brought about by the definition of 'writ of execution' in section 19 of the Sheriffs and Civil process Act Cap. 407, Laws of the Federation 1990. Writ of execution includes writ of attachment and sale, writ of delivery, writ of possession and writ of sequestration. It excludes garnishee proceedings…Given the distinction that exists between execution and garnishee proceedings for the enforcement of judgment, the existence of an application seeking for an order staying execution of a judgment does not preclude a judgment creditor from seeking to use some other legal methods to enforce judgment.*[65]

The above decision was quickly followed in *Nigerian Telecommunications Plc v I.C.I.C. (Directory Publishers) Ltd,*[66] *United Bank for Africa Plc v Ekanem.*[67] and in *Denton-West v Muoma*.[68] Curiously however, the same Court of Appeal took an opposite position in *S.T.B. Ltd v Contract Resources Ltd*[69] and *F.I.B. Plc v Effiong*[70] where it held that a pending motion of stay of execution should first be determined before proceeding with a garnishee proceedings. This position was also *adopted* and followed in *Nigerian Breweries Plc v Dumuje*.[71]

It is our humble and respectful opinion that the reasoning and conclusion in the *S.T.B. Ltd* line of cases are better and preferable to those championed by the *Purification case* above mentioned. First, it is our view that the much touted difference between enforcement of judgment by means of garnishee and writ of execution is at best, a distinction without a difference. In fact, the difference

[63] (2006) 6 M.J.S.C. 37.
[64] (2004) All FWLR (Pt. 211) 1479.
[65] (Supra) at pp. 1494-1494 paras. H-G.
[66] (2009) 16 NWLR (Pt. 1167) 356 at 388, paras. D-E.
[67] (2010) 6 NWLR (Pt. 1190) 207 at 224, paras. C-D.
[68] (2008) All FWLR (Pt. 433) 1423.
[69] (2001) 6 NWLR (Pt. 708) 115 at 126 paras, B-C.
[70] (2010) 16 NWLR (Pt. 1218) 199 at 207-208 paras H-A.
[71] (2016) 8 NWLR (Pt. 1515) 536.

between them is analogous to between six and half a dozen. In *Re: Overseas Aviation Engineering (G.B.) Ltd*,[72] Lord Denning defined 'execution' as follows:

> *Execution means, quite simply the process for enforcing or giving effect to judgment of the court and it is 'completed' when the judgment creditor gets the money or other thing awarded him by the judgment.*

It follows logically from the above that 'enforcement' and 'execution' are synonymous terms which are aimed at recovering the fruits of a judgment. Garnishee proceedings is one of the means of enforcement or execution of a judgment. Mere Issues of semantics should not be elevated to such a ridiculous height as to constitute the foundation for a novel principle of law.

Furthermore, it is also our submission, with due respect, that the decision in the *Purification case* that section 19 of the Sheriffs and Civil Process Act excludes garnishee proceedings in its definition of writ of execution is erroneous and misleading. This is so because section 19 defines writ of execution with the operative word 'includes'. It is a known fact that where the word 'includes' is used in the definition of a word, the express intendment is that the definition is inexhaustive.[73] This point was graphically captured by the Supreme Court in *P&CHS Co. Ltd v Migfo Nig. Ltd*[74] where Galadima, JAC declared as follows:

> *The word "includes" when used in a statute or written enactment can enlarge the scope of the subject-matter it qualifies or tend to qualify, only to an extent permitted by law.*

It follows from the above that section 19 of the Sheriffs and Civil process Act is rather an expansive and accommodating provision which is mutually exclusive with the maxim of *expressio unius est exclusio alterius* (that is, that the express mention on one thing implies the exclusion of those not so mentioned) which was erroneously applied in the *Purification case*. It is our respectful submission that had the Court of Appeal invoked the *ejusdem generis* rule of interpretation to section 19 of the Sheriffs and Civil Process Act, it would have realized that because garnishee proceedings is an established mode of execution or enforcement of judgment, it inexorably falls within the meaning and purview of 'writ of execution' under the aforesaid section.

We must hasten to add that for a motion for stay to be competent and have the desired effect in a garnishee proceedings, it must be filed by a proper party in the garnishee proceedings. Where it is brought by a stranger or a meddlesome interloper, it might be described as incompetent and thereby struck out. Thus, in *Union Bank of Africa Plc v Ekanem,*[75] an application for stay of execution filed by a judgment debtor who did not apply to join as a party to the garnishee

[72] (1962) 3 All E.R. 12 at 16.
[73] See Uhunmwangho v Okojie (1989) 5 NWLR (Pt. 122) 471 at 490.
[74] (2012) 18 NWLR (Pt. 1333) 555.
[75] (2010) 6 NWLR (Pt. 1190) 207 at 220 and 227.

proceedings was adjudged incompetent and discountenanced. According to Jean Omokri, JCA:

> *A motion by the judgment debtor to stay execution of the garnishee order is absurd. In the circumstances the appellant in the instant appeal, being a judgment debtor, is a mere busy body meddling in the affairs that do not concern him.*[76]

It is pertinent to point that the Supreme Court in the recent case of *Zenith Bank Plc v John*[77] has curiously introduced a new dimension to the issue under discourse when they held as follows:

> *Once an execution is completed, the court cannot order a stay of execution of the judgment already executed. For a party to ask for a stay of execution of an executed judgment is like offering a dead man medicine intended to cure his ailment; or closing the stable after the horse had bolted. Such a request is not grantable by a court of law, which does nothing in vain. In the instant case, it was not in dispute that a garnishee proceeding is one of the modes or methods of enforcing a judgment debt and that a Garnishee Order absolute had been made by a court of competent jurisdiction in this matter. Also not in dispute was the fact that there was no appeal against the said Garnishee Order absolute pending in the Court of Appeal.*[78]

The gravamen of the above decision of the apex court was explained in graphic terms by Muhammad, JSC thus:

> *The underlying principle that must inform our decision in this matter is that an injunction or stay does not proceed against a completed event. The order the applicant herein seeks to stay is a Garnishee Order Absolute which by its very tenor denotes that execution has already been levied against the property to which the order being sought relates. The money, with the Garnishee Order being made absolute, becomes wholly attached.*[79]

It must be pointed out at this juncture that the above decision of the Supreme Court only applies to cases where a garnishee order absolute has already been made. In other words, where the only order so far made is an order nisi, an application for stay of execution is amenable to keep things in status quo pending the determination of a valid appeal filed in respect of the same matter.

5. THE PRE-TRIAL CONSENT OF THE ATTORNEY-GENERAL TO GARNISHEE PROCEEDINGS

This issue is derivable from Section 84(1) and (3) of the Sheriffs and Civil Process Act, which for ease of reference, are reproduced in extenso hereunder.

> *83(1): 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 or in custodial egis, the order nisi shall not be made under the provisions of the last proceeding section unless consent to such attachment is first obtained from the*

[76] *Ibid.*
[77] (2015) 7 NWLR (Pt. 1458 393.
[78] (Supra) at 399 ratio 3.
[79] (Supra) at 426-427, paragraphs H-B. Note that a similar decision was reached in Nigerian *Telecommunications Plc v. I.C.I.C. (Directory Publishers) Ltd* (2009) 16 NWLR (Pt. 1167) 356 where the Court of Appeal per Omoleye, JCA held as follows: "*A garnishee proceeding cannot be restrained by an order of injunction. Therefore, neither interlocutory, prohibitory nor mandatory injunctions can be employed to either stop or undo garnishee proceedings*".

> *appropriate officer in the case of money in the custody or control of a public officer or of the court in the case of money in custodial egis, as the case may be.*
> *84(3): In this section, "appropriate officer" means –*
> *(a) In relation to money which is in the custody of a public officer who holds a public office in the public service of the Federation, the Attorney General of the Federation;*
> *(b) In relation to money which is in the custody of a public officer who holds a public office in the public servicer of the State, the Attorney General of the State.*

In construing the above provisions of the law, the Court of Appeal in the cases of *Christopher Onyewu v Kogi State Ministry of Commerce & Industries* [80] and *Government of Akwa Ibom State v Powercom Nig. Ltd*[81] repeatedly held that pursuant to Section 84(1) of the Sheriffs and Civil Process Act, no garnishee proceedings could be commenced against the monies of a public officer, public office or establishment with a commercial bank without the prior consent of the Attorney-General. The same position was followed in the recent case of *C.B.N. v S.C.S.B.V. (No. 1*).[82]

On the other hand, the same Court of Appeal in the case of *Purification Techniques (Nig) Ltd v Attorney-General of Lagos State*[83] made a complete volte face by holding that no consent is required where the garnishee in question is a commercial bank. The position of the Court was summarized by Galadima, JCA (as he then was) at page 1495 paragraphs C-E:

> *Given the nature of the relationship between banker and customer and of the contract that exists between them the customer has neither the 'custody' nor the 'control' of monies standing in his credit in an account with the banker. What the customer possesses is a contractual right to demand payment of such monies. Monies in the hands of the garnishee banker are not 'in the custody or under the control' of the judgment debtor customer. Such monies remain the property in the custody and control of the banker and payable to the judgment debtor until a demand is made.*

We are in complete agreement with the learned legal writer, Ekemini Udim[84] that the decision in the *Purification case* is preferable to and better than the ones represented in the *Christopher Onyejewu case* and others holding its position. It is our respectful opinion that the decision in the *Purification case* accords with good sense, reason and logic. What is more, the said decision also ensures unhindered access to the courts for the common man as it tends to find a way around an obvious impediment intended to restrict recourse to the courts. As was recently observed by the Supreme Court in the case of *Kayili v Yilbuk*[85]:

The Constitution has provided an opportunity for aggrieved persons to ventilate their grievances in a court of law, which is empowered to determine any civil

[80] (2003) 10 NWLR (Pt. 827) 40.
[81] (2005) All FWLR (Pt. 246) 1353.
[82] (2015) 11 NWLR (Pt. 1469) 130.
[83] (2004) 9 NWLR (Pt. 879) 665; (2004) All FWLR (Pt. 211) 479.
[84] (n. 1) p. 72.
[85] (2015) 7 NWLR (Pt. 1457) 26 at 36 ratio 9.

proceedings in which the existence of a legal right, power, duty, liability, interest, obligation or claim is in issue. The right is guaranteed and cannot be taken away or be made subject to any other legislation whatever.[86]

We wish to finally state that where the garnishee involved is the Central Bank of Nigeria which by itself qualifies as a public officer, the position laid down in the Purification Case will clearly be inapplicable and strict compliance with Section 84(1) of the Sheriff and Civil Process Act will be required.[87]

6. CONCLUSION

In this paper, we have carefully examined and discussed three thorny issues that have not only been recurring in garnishee proceedings, but have continued to disturb parties involved in the said proceedings. The situation has persisted as the Court of Appeal keep churning out conflicting and contradictory decisions on these issues. In the absence of a practice direction or a decision on the subject by the apex court, lower courts are encouraged to take their stand on the said issues. This article has subjected the issues to indepth critical evaluation and suggested the preferred paths to follow.

The merits of the approach in this paper are quite clear. First, it kick starts the debate on these crucial issues with a view to provoking more scholarly research and analysis on them. Secondly, it tries to assemble and analyse the relevant authorities on the issues in order to make future reference to them easier. Thirdly, it prescribes the safer options on the issues involved in order to nip in the bud the ever-increasing incidence of conflicting and contradictory judgments on them. It also serves as a guide for the apex court whenever it is opportune to consider and pronounce on these issues.

[86] See also *Gouriet v Union of Post Office Workers* (1977) 1 Q.B. 729 at 753 where Lord Denning, MR, stated as follows: '*This submission is to my mind, contrary to the spirit of the laws of England. These courts are open to every citizen who comes and complains that the law is being broken. So long as he has a proper case for consideration, we will hear him… No one shall forbid him access'*.

[87] See C.B.N. v S.C.S.B.V. (No. 1) (supra).